INDIAN CLAIMS COMMISSION

BETSIAMITES BAND

HIGHWAY 138 AND RIVIÈRE BETSIAMITES BRIDGE INQUIRIES

PANEL

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SUMMARY

BETSIAMITES BAND: HIGHWAY 138 AND RIVIÈRE BETSIAMITES BRIDGE INQUIRIES
Québec

The report may be cited as Indian Claims Commission, *Betsiamites Band: Highway 138 and Rivière Betsiamites Bridge Inquiries* (Ottawa, March 2004).

This summary is intended for research purposes only. For a complete account of the inquiry, the reader should refer to the published report.

Panel: Commissioner S.G. Purdy (Chair), Commissioner A.C. Holman

Right of Way – Road – Bridge – Expropriation; Indian Act – Expropriation

The Specific Claim

The Betsiamites Band submitted two specific claims to the Department of Indian Affairs and Northern Development (DIAND) in May 1995, alleging that reserve lands taken for the purpose of a provincial highway and bridge were never surrendered to Canada and transferred to the Province of Quebec, or expropriated with the consent of the Governor in Council. In April 1999, DIAND rejected the claims, whereupon the Band requested that the Indian Claims Commission (ICC) conduct inquiries into the two claims: the first relating to the construction of Highway 138 (formerly Highway 15) across the reserve; and the second relating to the bridge over the Rivière Betsiamites on the reserve, built to accommodate the highway. Having accepted the claims for inquiry, the ICC conducted a community session in June 2001, and a hearing in May 2002 to receive the evidence of a former employee of DIAND. The ICC also ruled in August 2002 that 83 documents tendered by Canada would be admitted into evidence as relevant to determining whether English only was used in the drafting of band documents. Prior to completing the ICC inquiry, the Minister of Indian Affairs accepted the two specific claims for negotiation.

Background

In 1924, the Betsiamites Band passed a Band Council Resolution (BCR) permitting "the Provincial Government of Quebec to construct a colonisation road across [its] Reserve at Bersimis" and asking "the Department of Indian Affairs to make such arrangements in connection with the granting of right-of-way of such road as may be best in [its] interests." In 1928, DIAND assumed full financial responsibility, for construction, which began without the right of way having been granted to the Quebec government. Lack of funds during the Depression years contributed to delays in completing the highway, but in 1932, the Indian Agent recommended that construction resume as a means of providing work to the Band. DIAND sought band approval to use band funds to help finance the roadworks on the reserve, and some evidence exists that the Band approved an expenditure of $2,000 for that purpose. After 1938, the government of Quebec took over full responsibility for completing the highway on the reserve. When the highway was finally completed in 1942, title to the reserve land taken for the road still remained with the federal government.

The second specific claim relates to a proposal in 1954 to replace the ferry across the Rivière Betsiamites with a bridge to accommodate the increase in traffic on the highway. The proposed location of the bridge required additional reserve land and, with band approval, DIAND gave Quebec permission to build the bridge, which was completed in 1958. From time to time, federal officials informed Quebec of the requirements to take a right of way over the reserve land taken for the highway and the bridge, but the process was never completed.

The community session revealed that, in the 1970s, the band members learned that title to the right of way for the highway had never been transferred to Quebec. Subsequently, the Band took the position that, in any negotiations with the province, it would not surrender the land for the right of way but instead demand compensation for past use of the land and an annual lease fee for future use. After attempts to negotiate a settlement with Quebec failed, the Band filed its specific claims with DIAND in 1995.

Issues

Did Canada breach its lawful obligations with respect to Highway 15 (now Highway 138) within the boundaries of the Betsiamites Reserve? Did Canada breach its lawful obligations with respect to the bridge over the Rivière Betsiamites and its connecting road? Did Canada breach its lawful obligations by

withdrawing funds held in trust for the Betsiamites Band to pay for roads within the boundaries of the Betsiamites Reserve between 1928 and 1939?

Findings
The ICC made no findings. Prior to the completion of the inquiries, the two specific claims were accepted for negotiation by Canada in January 2004.

References
In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research that is fully referenced in the report.

Treaties and Statutes Referred to
An Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada, SProvC 1851 (14–15 Vict.); *Indian Act*, RSC 1927, RSC 1952.

Other Sources Referred to
DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994)1 ICCP 171–85; Claude Gélinas, *Entre l'assommoir et le godendart. Les Atikamekw et la conquête du Moyen-Nord québécois, 1870–1940* (Sillery: Septentrion, 2003).

Counsel, Parties, Intervenors
R. Mainville for the Betsiamites Band; C. Vary, S. Picard for the Government of Canada; J.B. Edmond to the Indian Claims Commission.

PART I

INTRODUCTION

Background to the Inquiries

In May 1995, the Betsiamites Band[1] submitted two specific claims to the Government of Canada: Highway 138 and the Betsiamites Reserve; and Bridge over the Rivière Betsiamites.[2] Both of these claims relate to the legal title to lands used for the construction of the road originally known as Highway 15 and now known as Highway 138 across the reserve. These lands were never formally surrendered to the federal Crown and transferred to the Province of Quebec, or expropriated with Governor in Council consent.

The matter of Highway 138 and the Rivière Betsiamites bridge has long been an administrative quagmire, characterized by procedural delays and bureaucratic processes spanning more than 40 years. Construction of the section of road that lies within the boundaries of the Betsiamites Reserve was first begun in the late 1920s. In the decades that followed, officials of the Department of Indian Affairs repeatedly raised the issue of the legal status of the land used for the road, but their efforts to regularize the situation with the Province of Quebec never resulted in concrete action. In the 1980s, the Bestiamites Band entered into negotiations with the Quebec Government to settle the dispute, but these also proved unsuccessful. In 1995, the Band submitted its claims to the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND). On April 16, 1999, the department advised Chief René Simon that the Crown had decided [translation] "on a preliminary basis, to reject these two specific claims."[3] In 2000, the band council requested that the Indian Claims Commission (ICC) intervene, and the Commission agreed to conduct an inquiry.

Mandate of the Commission

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on "whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where

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1 Depending on the historical context, the Betsiamites Band will be referred to alternatively as the "Montagnais," "Betsiamites," "Bersimis," "Bersimis Band," or the "Band."

2 Paul Cuillerier, Director General, Specific Claims Branch, to René Simon, Chief, Montagnais de Betsiamites, April 16, 1999, with attachment (ICC Documents, pp. 1656–64).

3 Paul Cuillerier, Director General, Specific Claims Branch, to René Simon, Chief, Montagnais de Betsiamites, April 16, 1999, with attachment (ICC Documents, pp. 1656–64).

the claim was already rejected by the Minister."[4] This Policy, outlined in DIAND's 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding "lawful obligation" on the part of the federal government.[5] The term "lawful obligation" is defined in *Outstanding Business* as follows:

> The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation," i.e., an obligation derived from the law on the part of the federal government.
>
> A lawful obligation may arise in any of the following circumstances:
>
> i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
> ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
> iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
> iv) An illegal disposition of Indian land.[6]

The Commission was asked to inquire into and report on whether the Betsiamites Band's claims regarding Highway 138 and the bridge over the Rivière Betsiamites were valid claims for negotiation pursuant to the Specific Claims Policy. By agreement, the Commission commenced its inquiry into the two claims together because of the similarities in the historical facts of each claim. Following the community session in June 2001, during which elders of the Betsiamites community gave oral evidence, the Commission , in May 2002, took the evidence of a former employee of the Department of Indian Affairs. The panel ruled in August 2002 that 83 documents tendered by Canada would be admitted into evidence, on the basis that they were relevant to determining whether English only was used in the drafting of documents attributed to the band council or the band Chief.[7] The ruling is reproduced as Appendix A to this report. Subsequently, Canada reconsidered its rejection of the claims and offered to accept them for negotiation. Canada's offer is reproduced as Appendix B to this report.

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[4] Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

[5] DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 Indian Claims Commission Proceedings (ICCP) 171–85 (hereafter *Outstanding Business*).

[6] *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 171 at 179–80.

[7] ICC, *Betsiamites Band: Highway 138 and Rivière Betsiamites Bridge Inquiries - Interim Ruling* (Ottawa, August 2002).

This report, therefore, summarizes the history of the two specific claims and the role of the Commission prior to their acceptance by Canada. A summary of the documentary evidence, transcriptions, and the balance of the record in these inquiries is set forth as Appendix C.

PART II

HISTORICAL BACKGROUND

Establishment of the Reserve

The Betsiamites Reserve was created in the latter half of the 19th century and is located on the North Shore of the St Lawrence River, between Tadoussac and Baie-Comeau. It was established after the Province of Canada, in 1851, passed the *Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada*,[8] which set aside 230,000 acres of land for the Indians of Lower Canada. These lands were distributed by Order in Council two years later.[9] The reserve was initially created for the Montagnais of the upper North Shore and covered an area of 70,000 acres, between the Rivière aux Vases and the Rivière aux Outardes. On April 20, 1861, at the request of the Oblate Missionaries, the Province of Canada passed an Order in Council altering the boundaries of the reserve, which henceforth would be situated between the Rivière Betsiamites and Rivière aux Rosiers.

The reserve was created in part to protect the Montagnais against the encroachment of non-aboriginal settlement along the North Shore, and in part as a direct result of Canada's new Indian policy, which sought to encourage migratory aboriginal populations to settle and adopt an agricultural way of life. Through the latter half of the 19th century, however, farming was slow to take hold at Betsiamites, with hunting and fishing continuing to be central to the Montagnais economy. Some livestock rearing and crop growing began to appear, but very little.

At the start of the 20th century, the Betsiamites Reserve was home to approximately 500 Montagnais, but they did not live on the reserve year-round.[10] Their custom was to spend a few months each year on the reserve, usually in the summer. During the rest of the year, most would move into the interior to hunt and trap, since fur trading was still an important economic activity. In 1908, after visiting the reserve, J.A. Macrae, Inspector of Indian Agencies and Reserves, reported that eventually it would be necessary for the people to change their mode of life, possibly to the mixed pursuits of farming and fishing, as a result of the dwindling wildlife population.[11]

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[8] *An Act to authorize the setting apart of Lands for the use of certain Indian Tribes in Lower Canada*, SProvC 1851 (14–15 Vict.), c. CVI.

[9] Order in Council, August 9, 1853, Library and Archives Canada (LAC), RG 1, E8, vol. 48.

[10] J.A. Macrae, Inspector of Indian Agencies and Reserves, to Frank Pedley, Deputy Superintendent General of Indian Affairs (DSGIA), September 9, 1908, LAC, vol. 3048, file 237660, pt. 18 (ICC Documents, p. 4).

[11] J.A. Macrae, Inspector of Indian Agencies and Reserves, to Frank Pedley, DSGIA, September 9, 1908, LAC, vol. 3048, file 237660, pt. 18 (ICC Documents, pp. 4–15).

Road Construction Proposals, 1900–27

The Montagnais traditionally used inland routes, which included paths, portage trails, and, above all, the waterways they paddled inland as summer gave way to autumn, and which carried them back to the coast in late spring. These were the routes of primary importance to them and their economy at the time. As Pascal Bacon explained at the community session: "we talk about Road 138 presently. Personally, I don't recall that such a road existed when we were travelling to our territories. We were using the [Betsiamites] River."[12] Until the late 1800s, however, virtually everyone along the North Shore of the St Lawrence River travelled east and west by boat. Local land routes along the North Shore were established haphazardly, with no systematic plan. In 1914, the Surveyor General of Quebec noted that an absence of roads and easy communications hindered settlement of this region, and he introduced the concept of a regional road.[13]

Proposal of the Municipality of Sept-Cantons-Unis

In 1914, the territory surrounding, but not including, the Betsiamites Reserve was united as the rural municipality of Sept-Cantons-Unis du Saguenay. Upon learning of the municipality's intentions to extend and maintain the road system in the region, the Indian Agent at Betsiamites, Joseph F.X. Bossé, wrote to his superiors asking for Ottawa's position as regards opening a road on the Betsiamites Reserve.[14] On March 6, 1917, J. D. McLean, Secretary of Indian Affairs, informed Bossé that the construction of a road across the reserve would require the approval of the Governor in Council, in accordance with the *Indian Act*. To obtain such approval, the municipality would first have to survey the lands and provide the Department of Indian Affairs with a plan showing the route of the proposed road. The decision as to whether the Band would have to contribute to the costs of building and maintaining the road would depend on whether the non-aboriginal population or the Band stood to benefit most. The Band would have to contribute only if the road truly served the interests of the band members.[15] In his March 27 reply to McLean, Bossé asserted that the road would indeed benefit the Betsiamites' community in that it would give them easier access to their

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12 ICC Transcript, June 14, 2001, simultaneous English translation (ICC Exhibit 14b, pp. 136–37, Pascal Bacon).

13 Henri Bélanger, Surveyor General of Quebec, to Minister of Lands and Forests, October 28, 1914, Appendix No. 35 in Québec, *Rapport du Ministre des Terres et Forêts, 1915* (Quebec City, 1915), 72 (ICC Documents, p. 33).

14 Joseph F.X. Bossé, Indian Agent, to J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, February 14, 1917, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, pp. 34–35).

15 J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, to Joseph F. X. Bossé, Indian Agent, March 6, 1917, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 40).

hunting grounds and facilitate the delivery of hay for band members who had taken up farming and had animals to feed.[16] However, there is no documentary evidence that Bossé consulted the Band on this matter.

The development of the road project progressed no further at that time, likely because Sept-Cantons-Unis lacked the necessary funds to proceed, seeming ill-equipped even to perform the metes and bounds survey required by Indian Affairs to secure a right of way over the lands needed for the proposed road.[17] In 1923, the municipal council made a formal request, adopting a resolution to petition Indian Affairs for permission to open [translation] "a winter portage on Rivière au Rosier at Betsiamites, to avoid the inconvenience of travelling over ice and dealing with tides."[18] The department granted this request on certain conditions: if the route was to cross land improved by the Montagnais, the municipality would first have to assess damages and pay appropriate compensation; no trees of marketable size were to be felled to clear the route, and any wood cut would be made available to the Montagnais for their use; and construction costs would have to be fully assumed by the municipality. The Indian Agent was also instructed to trace the approximate position of the road, once completed, on a blue print plan to be returned to the department.[19]

Transfer of Responsibility to the Province

At the request of Sept-Cantons-Unis, the Province of Quebec intervened in March 1924, asking Indian Affairs to link the settlement roads by opening a section of road across the reserve.[20] In his reply to the Quebec Department of Colonization, Mines and Fisheries, Duncan Campbell Scott, Deputy Superintendent General of Indian Affairs (DSGIA), reiterated the department's position that it refused to contribute financially to the construction project because the road would not benefit the

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16 Joseph F.X. Bossé, Indian Agent, to J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, March 27, 1917, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, pp. 41–43).

17 This fact was noted in a letter from the Betsiamites Agent in March 1917, and it constitutes the first reference to obstacles encountered in attempting to fulfill administrative requirements in this matter. Joseph F.X. Bossé, Indian Agent, to J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, March 27, 1917, LAC, RG 10, vol. 7677, file 23003-1 9 (ICC Documents, p. 41).

18 Arsène Bouliane, Secretary-Treasurer, municipality of Sept-Cantons-Unis du Saguenay, to Alf. Powers, Indian Agent, October 24, 1923, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 110).

19 J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, to Alf. Powers, Indian Agent, October 31, 1923, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 112).

20 J.E. Perrault, Minister of Colonization, Mines and Fisheries, to the Department of Indian Affairs, March 18, 1924, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 119).

Montagnais.[21] Indian Affairs did agree, however, to make representations to the Betsiamites Band and council in an effort to obtain the consent necessary for the granting of a right of way:

> In order however to co-operate with your Department in the matter I have to state that if you will furnish a blue print plan showing the right-of-way required, steps will be taken to secure the consent of the Indians and the approval of Council to have such right-of-way transferred to your Department.[22]

It would seem Indian Affairs was successful, because three months later the Betsiamites Band Council adopted a Band Council Resolution (BCR) consenting to the construction of the road:

> We the undersigned Chief, Principal men and members of the Bersimis band hereby consent to permitting the Provincial Government of Quebec to construct a colonisation road across our Reserve at Bersimis and request the Department of Indian Affairs to make such arrangements in connection with the granting of right-of-way of such road as may be best in our interests.[23]

The band council imposed no specific conditions in return for its consent.

Financial Participation of Indian Affairs

On August 23, 1924, the Quebec Department of Colonization, Mines and Fisheries was notified of the BCR and was asked to submit plans of the road.[24] No doubt because the summer was drawing to a close and the remaining time for construction was limited, the department replied that it had no intention of starting construction that year and therefore saw no need to submit a survey plan.[25] The following year, "the road through the Reserve at Bersimis was planned and marked out,"[26] without a plan having been sent to Ottawa.

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[21] D.C. Scott, DSGIA, to J.E. Perrault, Minister of Colonization, Mines and Fisheries, April 9, 1924, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 123).

[22] D.C. Scott, DSGIA, to J.E. Perrault, Minister of Colonization, Mines and Fisheries, April 9, 1924, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 123).

[23] Bersimis Band Council Resolution (BCR), August 11, 1924, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 127).

[24] A.F. MacKenzie, Acting Assistant Deputy and Secretary of Indian Affairs, to L.A. Richard, Deputy Minister, Department of Colonization, Mines and Fisheries, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 130).

[25] L.A. Richard, Deputy Minister, Department of Colonization, Mines and Fisheries, to A.F. Mackenzie, Acting Assistant Deputy and Secretary of Indian Affairs, August 29, 1924, LAC, RG 10, [vol. 7677, file 23003-1] (ICC Documents, p. 131).

[26] Department of Indian Affairs to Pierre F. Casgrain, MP, House of Commons, May 10, 1926, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 140).

The question of funding further delayed the project, even though Indian Affairs finally agreed to share the road construction costs with the province in 1926. Replying on May 10, 1926, to a letter from a federal Member of Parliament, an unnamed Indian Affairs' official announced that the department would contribute approximately 40 per cent of the costs, pursuant to a rule apparently in effect at the time governing the funding of roads within the boundaries of an Indian reserve in Ontario and Quebec.[27] This contribution was increased to 50 per cent the following year, which represented the sum of $2,000.[28] Although everything seemed to be in place for the construction to begin, the Department of Colonization delayed the start three more times – in 1926, 1927, and 1928 – citing financial or logistical problems each time.[29]

After these repeated postponements by the Quebec Government, which seemed in no hurry to get the road built, Indian Affairs began in January 1928 to consider using the funds it had set aside to go ahead with the project, even if the province did not assume its share of the costs.[30] By July of that year, Indian Affairs was prepared to undertake the road construction project alone and recommended that, insofar as possible, preference be given to hiring Indian workers.[31] The department's decision to assume full financial responsibility for the project represented a complete reversal of the position it initially adopted in 1924, when it refused to provide any federal funding whatsoever.

From 1924 to 1928, the proposal to build a road across the Betsiamites Reserve was shifted through three different government levels. Originally put forward by the municipality of Sept-Cantons-Unis,

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[27] Department of Indian Affairs to Pierre F. Casgrain, MP, House of Commons, May 10, 1926, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 140). Curiously, it seems this policy was not brought to D. C. Scott's attention in 1924.

[28] A.F. MacKenzie, Acting Assistant Deputy and Secretary of Indian Affairs, Ottawa, to L.A. Richard, Deputy Minister of Colonization, Mines and Fisheries, September 19, 1927, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 154).

[29] See L.A. Richard, Deputy Minister of Colonization, Mines and Fisheries, to J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, May 14, 1926, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 142); L.A. Richard, Deputy Minister of Colonization, Mines and Fisheries, to A.F. MacKenzie, Acting Assistant Deputy and Secretary of Indian Affairs, September 22, 1927, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 156); L.A. Richard, Deputy Minister of Colonization, Mines and Fisheries, to D.C. Scott, DSGIA, April 30, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 168); Emile D. Normandeau, Chief Engineer, Department of Colonization, to D.C. Scott, DSGIA, June 12, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 173); L.A. Richard, Deputy Minister of Colonization, Mines and Fisheries, to D.C. Scott, DSGIA, July 11, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 182).

[30] Department of Indian Affairs to Pierre F. Casgrain, MP, House of Commons, January 17, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 164).

[31] A.F. MacKenzie, Acting Assistant Deputy and Secretary of Indian Affairs, to Wilfrid Barolet, Indian Agent, July 24, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, pp. 185–86).

the proposal was turned over to the Government of Quebec, which petitioned Canada to share construction costs. Though Canada finally agreed to assume 40 per cent of the costs in 1926, and then 50 per cent in 1927, the province was unable to contribute its share. In 1928, the Department of Indian Affairs, which had already set aside the necessary funds, decided to undertake the project alone. When work began on August 1, 1928,[32] the right of way issue was relegated to the background. There it would remain for the next decade, until the province assumed unofficial jurisdiction over the road that was to become Highway 15.

First Phase of Construction, 1928–38

Construction of the road was to have begun in August 1928,[33] but the actual date work began is unclear from the record. Although the province was to have paid half the costs, the Department of Indian Affairs assumed all of the costs between 1928[34] and 1930. Over this three-year period, approximately $10,000 was invested,[35] much of which was paid as wages to Montagnais hired to work on the project. Writing to the Minister of the Interior in February 1931, Scott noted that this investment was made without provincial participation, and concluded that Indian Affairs "have been fairly liberal in providing money for this road."[36] The department was hoping to make a further investment in 1931,[37] but ultimately no funds were set aside to continue the roadworks that year,

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[32] Wilfrid Barolet, Indian Agent, to A.F. MacKenzie, Acting Assistant Deputy and Secretary of Indian Affairs, August 1, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 188).

[33] Wilfrid Barolet, Indian Agent, to A.F. MacKenzie, Acting Assistant Deputy and Secretary of Indian Affairs, August 1, 1928, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 188).

[34] Although the sum of $2,000 had been set aside in 1927 for construction of the road, the correspondence and documentation on file indicate that this amount was never spent; in 1930, however, an Indian Affairs official, apparently in error, wrote that it had been spent and this error was repeated in 1931. See D.C. Scott, DSGIA, to Charles Stewart, SGIA, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 160); and, J.D. Chêné, Engineer, Department of Indian Affairs, to D.C. Scott, DSGIA, October 23, 1930, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 343).

[35] The annual expenditures were $2,000 in 1928, $4,000 in 1929, and $4,000 in 1930. J.D. Chêné, Engineer, Department of Indian Affairs, to D.C. Scott, DSGIA, October 25, 1929, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 296); J.D. Chêné, Engineer, Department of Indian Affairs, to D.C. Scott, DSGIA, June 2, 1930, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 304); J.D. Chêné, Engineer, Department of Indian Affairs, to D.C. Scott, DSGIA, October 23, 1930, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 343).

[36] D.C. Scott, DSGIA, to Thomas G. Murphy, Minister of the Interior, February 5, 1931, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 356).

[37] Thomas G. Murphy, Minister of the Interior, to Georges Bherer, Mayor of the municipality of Sept-Cantons-Unis du Saguenay, February 10, 1931, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 357).

owing to cost-saving measures introduced by the federal government.[38] It was not until 1934 that Canada resumed its financial participation in the project. By the time the project was put on hold in 1931, less than half of the road had been built, representing a distance of four of the nine miles needed to cross the reserve.[39]

When work was halted in 1931, Sept-Cantons-Unis began pressuring Indian Affairs to commit the necessary funds to complete the road. In 1932, the municipal council sent the department a resolution requesting additional federal funding of $10,000 to resume the work. According to the council, this investment was required "so that the reserve be not an obstacle to the National Road on the North Coast," which "will be open for circulation from Tadousac to the limits of the Indian Reserve of Bersimis about the middle of the summer."[40] The resolution was forwarded to Ottawa by the Indian Agent at Betsiamites, Eugène Lavallée, who supported it and added that the roadwork would constitute a "great help to the Indians." Agent Lavallée also suggested that the province might be willing to contribute 50 per cent of the costs of "the bed road."[41] However, Agent Lavallée's suggestion and the municipality's claim that the North Shore road would reach the edge of the reserve by the summer of 1932 were disputed by the Quebec Roads Department.[42]

Road Construction: A Form of Economic Aid

The Depression of the early 1930s all but destroyed the fur trade, which, according to anthropologist Claude Gélinas, fell into [translation] "a complete slump, simultaneously suffering plummeting demand for furs and a drastic drop in fur prices over several years."[43] This economic hardship, combined with dwindling wildlife populations, had severe repercussions on the living conditions of the Betsiamites people. In 1931, the Mayor of Sept-Cantons-Unis cited the Band's predicament in

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38 D.C. Scott, DSGIA, to Georges Bherer, Mayor of the municipality of Sept-Cantons-Unis, June 10, 1931, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 360).

39 Dr. Eugène Lavallée, Indian Agent, to the Department of Indian Affairs, February 20, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 377). Ultimately, the road would cover a distance of 11 miles. See correspondence from Harold H. McGill, Director of Indian Affairs, to Arthur Bergeron, Deputy Minister of Roads, December 7, 1938. LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 943).

40 Edmond Doucet, Secretary-Treasurer, municipality of Sept-Cantons-Unis, municipal resolution, February 8, 1932, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 375).

41 Dr Eugène Lavallée, Indian Agent, to the Department of Indian Affairs, February 20, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 377).

42 J.M. Montagnais, Deputy Minister of Roads, to A.F. MacKenzie, Secretary of Indian Affairs, May 26, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 394).

43 Claude Gélinas, *Entre l'assommoir et le godendart. Les Atikamekw et la conquête du Moyen-Nord québécois, 1870–1940* (Sillery: Septentrion, 2003), 176.

appealing to the federal government to resume roadwork within the boundaries of the reserve.[44] In April 1932, Agent Lavallée also noted the Band's economic distress and recommended that roadwork be resumed to assist the Montagnais. In his opinion, the Montagnais would definitely require assistance from Indian Affairs to survive these difficult times, and he reasoned: "From what we give in direct relief there is nothing left; but from what we give in wages there is the ... work [accomplished] ..."[45]

A month later, the Chief of the Bestiamites Band, Sylvestre Rock, in turn proposed roadwork as a form of economic aid. In a petition sent to the Superintendent of Indian Affairs on May 3, 1932, Chief Rock confirmed the hardship faced by the community and asked that the sum of $7,000 be set aside for "the repair of the road":

> I trust that you will take this request into serious consideration, and a refusal will prove a great disappointment to these poor Indians. Probably a large number of them will die of starvation and I must say that I am not exaggerating the situation.[46]

In response, Indian Affairs sent an Inspector to the reserve, who confirmed Agent Lavallée's earlier conclusions: the Band was in dire need of assistance and the best solution would be paid work, as opposed to direct aid that would bring nothing in return.[47]

The proposal was finally approved. Over the next few years, Betsiamites band members agreed to work on the road construction at a rate of $1.50 per day, which was $1.00 less than they had been paid for the same work from 1928 to 1930.[48]

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[44] Georges Bherer, Mayor of the municipality of Sept-Cantons-Unis, to Thomas G. Murphy, Minister of the Interior, June 4, 1931, LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 359).

[45] Eugène Lavallée, Indian Agent, to the Department of Indian Affairs, April 6, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 386).

[46] Sylvestre Rock, Betsiamites Chief, to Superintendent of Indian Affairs, May 3, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 389).

[47] C.C. Parker, Indian Affairs Inspector, to unknown recipient, June 28, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 397).

[48] Eugène Lavallée, Indian Agent, to A.F. MacKenzie, Secretary of Indian Affairs, July 29, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 400); "Return of Labour" for week ending August 4, 1928 LAC, RG 10, vol. 7677, file 23003-1 (ICC Documents, p. 189).

Use of Band Funds

In the spring of 1932, the Department of Indian Affairs was asked by Chief Sylvestre Rock to provide funds for roadwork in order to help support his people. After failed attempts to arrange a sharing of costs with the province for continued construction of the road, an Indian Affairs' departmental engineer suggested, in August, that band funds be used.[49] The manner in which the Band eventually consented to the use of these funds is unclear. It appears that, given the urgency of the situation, the approval process may have been expedited. Construction was to have begun as early in the year as possible to enable the Montagnais workers to leave the reserve in time for the fall hunt, having purchased equipment and supplies with their wages.[50] In a telegram dated August 12, Indian Affairs informed Indian Agent Lavallée that the Betsiamites Band Council needed to adopt a BCR approving the use of band funds for construction of the provincial highway through the reserve.[51] The Indian Agent sent a brief reply three days later: [translation] "Council and tribe unanimous as regards the suggestion in your Aug 12 message."[52] The Agent did not indicate whether this approval had been given after consultations, or whether a BCR had been adopted as requested. It should be noted that there is no such BCR in the record.

On September 16, 1932, the Superintendent General of Indian Affairs finally applied to the Governor in Council for the funds needed to proceed with the project, alleging that:

> the Bersimis Band of Indians ... have passed a resolution requesting that the sum of $2,000.00 be expended from their capital funds for the purpose of performing certain necessary road work on the reserve.[53]

The resolution was not appended to the submission, nor did the Superintendent General specify the date on which it was adopted. It is therefore impossible to determine whether any such resolution was ever passed by the band council. The release of band funds was not approved by the Governor

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[49] Sylvestre Rock, Betsiamites Chief, to the Superintendent of Indian Affairs, May 3, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 388); A.F. MacKenzie, Secretary of Indian Affairs, to E. Lavallée, Indian Agent, June 2, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 395).

[50] Eugène Lavallée, Indian Agent, to A.F. MacKenzie, Secretary of Indian Affairs, July 29, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 400); Sylvestre Rock, Betsiamites Chief, telegram to the Department of Indian Affairs, August 3, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 402).

[51] A.F. MacKenzie, Secretary of Indian Affairs, telegram to Eugène Lavallée, Indian Agent, August 12, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 404).

[52] Eugène Lavallée, Indian Agent, telegram to A.F. MacKenzie, Secretary of Indian Affairs, August 15, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 406).

[53] SGIA to His Excellency the Governor General in Council, September 16, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 411). There is some uncertainty regarding the actual date of this application. On the copy, "September 16" is written in hand over the original date, "August 19," which is crossed out.

in Council until October 29,[54] and authorization to start the roadwork did not reach Agent Lavallée until two weeks later.[55] In the meantime, torrential rains in mid-October had damaged the Papinachois road on the eastern part of the reserve, and its repair became a priority.[56] When Agent Lavallée finally announced on November 14 that the roadwork had begun, he did not specify whether the work would involve repairing the Papinachois road or resuming work elsewhere on the reserve,[57] but it is possible that the funds were used for both projects.

Because the roadwork did not start until so late in the year, only slightly more than half of the $2,000 withdrawn from the Band's account was spent in 1932.[58] Payments to Betsiamites band members were primarily in the form of supplies and clothing from the Hudson's Bay Company and general merchant Philippe Côté, who then submitted their invoices to the Indian Agent at Betsiamites.[59] Roadwork continued until February 20, 1933.[60]

Between 1931 and 1936, the federal government withdrew approximately $2,800 from the band council's fund.[61] Not all of these funds, however, were spent on the new road. In 1933, a portion was used to build a sidewalk along the reserve's main street[62] and for repairs to the main

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[54] Order in Council PC 42/2412, October 29, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 418).

[55] A.F. MacKenzie, Department of Indian Affairs, telegram to E. Lavallée, Indian Agent, November 12, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 419).

[56] Georges Bherer, Mayor of the municipality of Sept-Cantons-Unis, to Eugène Lavallée, Indian Agent, October 17, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 416).

[57] Eugène Lavallée, Indian Agent, telegram to A.F. MacKenzie, Secretary of Indian Affairs, November 14, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 420).

[58] Eugène Lavallée, Indian Agent, to A.F. MacKenzie, Secretary of Indian Affairs, February 20, 1933, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 534).

[59] Eugène Lavallée, Indian Agent, to A.F. MacKenzie, Secretary of Indian Affairs, December 6, 1932, Ottawa, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 444).

[60] Eugène Lavallée, Indian Agent, to A.F. MacKenzie, Secretary of Indian Affairs, February 20, 1933, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 534).

[61] [1931–32: $100.00] Betsiamites Band Capital & Interest Trust Fund Account, 1931–32 (ICC Documents, p. 352); [1932–33: $1042.58] Eugène Lavallée, Indian Agent, Betsiamites, to A.F. MacKenzie, Secretary, Department of Indian Affairs, February 20, 1933, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, pp. 534–36); [1933–34: $225.00] Betsiamites Band Capital and Interest Trust Fund Account, 1933–34, LAC, RG 10, vol. 5964 (ICC Documents, p. 660); [1934–35: $498.20] Betsiamites Band Interest Trust Fund Account, 1934–35," LAC, RG 10, vol. 5965 (ICC Documents, pp. 665–66); [1935–36: $1,000.00] Betsiamites Band Interest Trust Fund Account, 1935–36, LAC, RG 10, vol. 5966 (ICC Documents, p. 711).

[62] Eugène Lavallée, Indian Agent, to A.F. MacKenzie, Secretary of Indian Affairs, September 29, 1933, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 575).

street following a landslide;[63] lastly, in 1934, there are several references to urgent roadwork to repair damage to existing roads.[64] Thus, it is possible that not all of the $2,800 withdrawn over this five-year period was actually spent on the construction of Highway 138.

From 1928 to 1931, the Department of Indian Affairs invested close to $10,000 in the construction of the road across the reserve. In the three subsequent years, despite pressure from the municipality of Sept-Cantons-Unis, the federal government refused to commit additional funds to the project.[65] It did, however, authorize the use of band funds to enable roadwork to be resumed, a decision that appears to have been made in order to help the Betsiamites Band through a period of severe economic hardship, and not in response to pressure from the municipality. After refusing to invest directly in the project for three years, the federal government decided to inject funds again from 1934 to 1938, at which point the province stepped in. By then, Canada's investment totalled approximately $18,000.[66]

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[63] A.F. McKenzie, Secretary of Indian Affairs, telegram to Eugène Lavallée, Indian Agent, October 28, 1933, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 581).

[64] A.F. MacKenzie, Secretary of Indian Affairs, to Eugène Lavallée, Indian Agent, August 29, 1934, LAC, RG 10, vol. 7677, file 23003-1, pt. 3 (ICC Documents, p. 637); T.R.L. MacInnes, Acting Secretary of Indian Affairs, to Eugène Lavallée, Indian Agent, October 26, 1934, LAC, RG 10, vol. 7677, file 23003-1, pt. 3 (ICC Documents, p. 650); J.D. Chené, Departmental Engineer, Department of Indian Affairs, to McGill, October 4, 1934, LAC, RG 10, vol. 7677, file 23003-1, pt. 3 (ICC Documents, p. 645).

[65] A.F. MacKenzie, Secretary of Indian Affairs, to Eugène Lavallée, Indian Agent, March 31, 1932, LAC, RG 10, vol. 7677, file 23003-1A (ICC Documents, p. 383).

[66] [1928–29: $2,000.00; 1929–30: $3,999.92; 1930–31: $3,999.97] Canada, *Auditor General's Report for the fiscal year ending March 31, 1929, ... 1930*, and *... 1931* (Ottawa, 1929, 1930, and 1931), "Part I: Indian Affairs Department: Details of Revenue and Expenditure," p. 8, 8, and 10, respectively (ICC Documents, pp. 214, 303, 348); [1934–35: $1,009.91; 1935–36: $1,077.16] *Auditor General's Report for the fiscal year ending March 31, 1935*, and *... 1936* (Ottawa, 1936 and 1936), "Part I: Indian Affairs Department: Details of Revenue and Expenditure," pp. 7 and 7, respectively (ICC Documents, pp. 675, 717); [1936–37: $2,518.68] Canada, *Auditor General's Report, for the fiscal year ending March 31, 1937* (Ottawa, 1937), "Part L: Mines and Resources Department: Details of Revenue and Expenditure," p. 55 (ICC Documents, p. 827). The details of expenditure for the Bersimis Agency only lists $1,518.68 for roads, but this is because the other $1,000.00 was included in the Special Supplementary Estimates. See DSGIA to SGIA, November 7, 1936, LAC, RG 10, vol. 7677, file 23003-1, pt. 3 (ICC Documents, p. 810); [1937–38: $2,500.00] T.R.L. MacInnes, Acting Secretary, Indian Affairs Branch, to Eugène Lavallée, Indian Agent, Betsiamites, May 10, 1937; Lavallée to MacInnes, May 14, 1937 [translation]; MacInnes to Lavallée, May 28, 1937; correspondence in LAC, RG 10, vol. 7677, file 23003-1, pt. 3 (ICC Documents, pp. 831, 833–38); [1938–39: $1,032.14] Canada, *Auditor General's Report for the fiscal year ending March 31, 1939* (Ottawa, 1940), "Part L: Mines and Resources Department: Details of Revenue and Expenditure," p. 63 (ICC Documents, p. 1004).

Quebec Takes over Highway Construction, 1938–50

In October 1938, the Quebec Government took charge of the construction of Highway 15.[67] The work was contracted out to two firms: F. Santerre Company was hired to build the section from Rivière Papinachois to Rivière aux Rosiers, and Laviolette's Construction Company was hired for the section from Rivière Bersimis to Rivière Papinachois.[68] From then on, Quebec assumed full responsibility for the project and Indian Affairs made no further investment in the road .

Right of Way Issue Revisited

The province's direct intervention within the boundaries of the reserve revived the issue of the status of the land over which the road was being built. This issue had been left pending in the late 1920s, no doubt because Canada had been the project proponent from the 1920s to 1938.

In November 1938, the Department of Indian Affairs learned that the province had commenced roadwork within the boundaries of the reserve.[69] The federal government did not demand that the work be halted, but did insist that the necessary steps be taken to ensure that title over the land used for the road would be transferred to the province. In a letter to the Deputy Minister of Roads dated December 7, 1938, Harold H. McGill, Director of Indian Affairs, explained the process as follows:

> In order to allow the Provincial Government to enter an Indian Reserve for purpose of constructing a road it is necessary to obtain the approval of the Governor in Council for the surrender of the necessary land, under Section 48 of the Indian Act, and in order to put the matter before the Council I should like to have a plan of the road through the reserve and confirmation of the description given below, or if this description is not exactly correct perhaps your engineers would be kind enough to furnish us with the proper particulars as to the location.
>
> > "The road in question starts at the South boundary of the Bersimis Reserve about one-half mile east of the Riviere de L'ile Rosiers and runs Westerly on a distance of about 5.6 miles to Riviere Papinachois, where a bridge is required; thence in Westerly direction 3.5 miles;

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67 The highway was assigned this number in 1934: Quebec, Roads Department, *1934 Report* (Quebec: King's Printer, 1934), 16 (ICC Documents, p. 598).

68 Wilfrid Barolet, Indian Agent, to T.R.L. MacInnes, Secretary of Indian Affairs, November 29, 1938, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, pp. 938–39).

69 Wilfrid Barolet, Indian Agent, to T.R.L. MacInnes, Secretary of Indian Affairs, November 7, 1938, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 934).

> thence in a Northerly direction for a distance of approximately 2 miles."[70]

McGill's request was forwarded to the Quebec Department of Colonization, which had jurisdiction over the roadwork. On December 28, 1938, the Department of Colonization submitted an approximate plan of the road to Indian Affairs[71] and, in January 1939, confirmed the validity of Indian Affairs' road description.[72] In a letter dated February 6, 1939, to the Deputy Minister of Colonization, McGill acknowledged receipt of the "blue print" but expressly noted that the process to ensure transfer of title had not been completed. He described the steps to be taken to obtain the surrender of the land needed for the road as follows:

> It is the desire of this department ... that the work should be executed in accordance with the provisions of section 48 of the Indian Act, which requires that your department should receive the consent of His Excellency in Council to expropriate the land required for a road within the Indian reserve.
>
> You are requested to make formal application for the land desired, accompanied by a plan on tracing linen signed by a duly qualified surveyor, showing the widths, lengths and directions of the several courses, together with details as to all individual improvements affected, if any, and a sufficient tie to the boundary of the reserve to permit of it being plotted on our plan. When the application and plan have been received the matter will be referred to our local Indian Agent for a report, and when the details are arranged and compensation if any adjusted, the consent of his Excellency in Council will be requested in accordance with the terms of your application, and the Indian Act.[73]

The procedures were thus clearly set out: the province was to submit a plan drawn up by a duly qualified surveyor, after which the Betsiamites' Indian Agent would prepare a report on the application; once arrangements had been made with the Band regarding any compensation, the application would be submitted to the Governor in Council for approval. However, the last paragraph of McGill's letter raises some ambiguity regarding the transfer of title to the province:

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70 Harold H. McGill, Director of Indian Affairs, to Arthur Bergeron, Deputy Minister, Roads Department, December 7, 1938, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 943).

71 A.O. Barrette, Chief Engineer, Department of Colonization, to Harold H. McGill, Director of Indian Affairs, Department of Mines and Resources, December 28, 1938, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 947).

72 A.O. Barrette, Chief Engineer, Quebec Department of Colonization, to M. Christianson, General Superintendent of Indian Agencies, Indian Affairs, January 12, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 951).

73 Harold W. McGill, Director of Indian Affairs, to J. Ernest Laforce, Deputy Minister of Colonization, February 6, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 958).

> If you do not wish to acquire title to the land in the road you should make application to enter upon the reserve for the purposes of construction, accompanied by a plan showing the details above requested.[74]

The Director of Indian Affairs was thus suggesting that the province could simply seek authorization to build the road rather than to acquire title over the land in question.

On March 1, 1939, the Quebec Minister of Colonization applied to Indian Affairs for "permission to build a road crossing the Indian Reserve of Bersimis, the whole according to the plan annexed hereto and under the conditions above mentioned."[75] In submitting this application with an attached plan, it appears the province was complying with the instructions in the last paragraph of McGill's February 6 letter; in other words, the province was choosing to seek a right of way to construct the road, rather than acquire title over the land in question. On March 31, 1939, McGill granted Quebec the permission requested but reiterated the procedure provided by section 48 of the *Indian Act* for the transfer of legal title to Indian land.[76] McGill reminded the province that the Band would have to be compensated for the right of way, but he was confident that an agreement would be reached easily, given the benefits the Betsiamites Band would derive from the construction:

> the Branch may take into consideration the enhanced value to the Reserve brought about by the construction of the highway, and so I do not anticipate any trouble in coming to an understanding about the price of the right of way through unimproved land.[77]

In addition to the request made by McGill in his March 31 letter of permission, M. Christianson, General Superintendent of Indian Agencies, sent a similar request on the same date to the Deputy Minister of Colonization.[78] The Deputy Minister's reply, which is the last letter in the record dealing with this subject before 1944, attests to the confusion surrounding the plan that was to have been submitted to secure transfer of title:

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[74] Harold W. McGill, Director of Indian Affairs, to J. Ernest Laforce, Deputy Minister of Colonization, February 6, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 959).

[75] Henry L. Auger, Minister of Colonization, to the Minister of Mines and Resources [*ex officio* also of Indian Affairs], March 1, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 966).

[76] Harold W. McGill, Director of Indian Affairs, to A. Dussault, Law Officer, Department of Colonization, March 31, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 973).

[77] Harold W. McGill, Director of Indian Affairs, to A. Dussault, Law Officer, Department of Colonization, March 31, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 973).

[78] M. Christianson, General Superintendent of Indian Agencies, to J.E. Laforce, Deputy Minister of Colonization, March 31, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 974).

> In the last paragraph of your letter, mention is made that a blue print copy of the reserve plan is being sent to me. I have not as yet received the plan in question. Upon receipt of same, I will have our Engineer indicate on it the information requested, if necessary.
>
> I wish to point out, however, that under date of March 6th, our Law Officer, Mr. Adjutor Dussault, forwarded to Mr. H.W. McGill, Director of Indian Affairs, a plan similar to that requested.[79]

This letter clearly shows that the Department of Colonization considered the plan it had submitted along with its March 1, 1939, application for the right to build on the reserve (both of which were attached to Dussault's March 6 letter[80]) to be an official plan, or "similar to that requested."[81] No reply to this letter could be found in the record, so there is no way of knowing Indian Affairs' position on this matter.

Attempts to Transfer Title Resumed in 1944

Jurisdiction over the highway across the Betsiamites Reserve was transferred to the Quebec Roads Department in 1940.[82] The highway was completed in 1942.[83] The issue of the transfer of title to the province resurfaced by chance in 1944, when a problem arose in connection with the granting of a lease to a logging company. In April of that year, the Deputy Minister responsible for Indian Affairs, Charles Camsell, raised the issue in a letter to Deputy Minister Avila Bédard of the Quebec Department of Lands and Forests:

> Within recent years your Government has run a highway through the Reserve (incidentally without the consent of the Governor General in Council as provided by Section 48 of the Indian Act) without filing any plan with this Department. We are therefore without any authentic information as to the exact location of the highway.[84]

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79 J.E. Laforce, Deputy Minister of Colonization, to M. Christianson, General Superintendent of Indian Agencies, April 6, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 978).

80 A. Dussault, Law Officer, Department of Colonization, to Harold W. McGill, Director of Indian Affairs, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 968).

81 J.E. Laforce, Deputy Minister of Colonization, to M. Christianson, General Superintendent of Indian Agencies, April 6, 1939, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 978).

82 Quebec, Roads Department, *1940 Report* (Quebec: King's Printer, 1940), 3–5 (ICC Documents, pp. 1021–22).

83 Quebec, Roads Department, *1941 Report* (Quebec: King's Printer, 1941), 50 (ICC Documents, p. 1032).

84 Deputy Minister of Mines and Resources [*ex officio* also of Indian Affairs], to Deputy Minister of Lands and Forests, April 14, 1944, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 1056).

In June 1944, Quebec Department of Lands and Forests submitted two plans to Indian Affairs showing the location of the highway on either side of the Bersimis River.[85] The first plan (M-5) bears a stamp, but the inscription on the stamp is illegible due to deterioration of the document, and it is not clear if it is an authentication by a duly qualified topographical surveyor. As in 1939, the absence of a prompt reply from Indian Affairs meant that the province had no way of knowing whether the plans were deemed satisfactory.

In a March 1946 letter to the Quebec Department of Lands and Forests, the Acting Deputy Minister of Mines and Resources again raised the issue of the transfer of title. In an effort no doubt to remove any financial obstacles, he advised the province that it would not be required to pay for the land appropriated for the highway, since the construction and maintenance of the road constituted sufficient compensation:

> In 1944, we requested a plan of this highway, and with your letter of June 1st, 1944 you were good enough to supply a plan of this highway.
>
> It is now suggested that title to the land comprising the highway right of way should be with your Department rather than remain with the Crown Dominion. A transfer to the Crown Provincial might be made by Dominion Order in Council under Section 48 of the Indian Act, R.S.C. 1927, Chapter 98.
>
> It is considered that your construction and maintenance of the highway is sufficient benefit to the Indians, and that on this transfer no other compensation should be required.
>
> Please advise if you agree that title should now be transferred, and if you have a plan of the highway from which a surveyor could write a description of the portion within the Indian Reserve. Such a description would be required for the preparation of a submission to the Governor General in Council.[86]

It appears that the assessment of the benefits of this transportation corridor for the Montagnais served as a barometer in determining whether compensation was due. Yet the documentary evidence shows no consensus regarding the benefits the Betsiamites Band would derive from the highway. In the early years when the project was first being considered, the Indian Agents at Betsiamites made much of the beneficial effects the road would have.[87] From 1928 to 1938,

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[85] Avila Bédard, Deputy Minister of Lands and Forests, to Charles Camsell, Deputy Minister of Mines and Resources, June 1, 1944, with attachments, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, pp. 1061–63).

[86] Acting Deputy Minister, Department of Mines and Resources, to Avila Bédard, Deputy Minister of Lands and Forests, March 14, 1946, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 1092).

[87] In 1917, Agent Bossé noted that the road would provide the Montagnais with access to their hunting grounds on the Rivière aux Outardes and Rivière Manicouagan (Joseph F.X. Bossé, Indian Agent, to J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, March 27, 1917, LAC, RG 10, vol. 7677, file 23003-1 [ICC Documents, pp. 41–43]). In 1923, Agent Alfonse Powers made a similar argument (Alf. Powers, Indian Agent, to J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, October 26, 1923, LAC, RG 10, vol. 7677, file 23003-1

however, correspondence from the Agents indicates that the benefits derived by the Montagnais were largely indirect and lay primarily in the income generated by the construction work. When the province assumed responsibility for road construction, the comments became more negative with respect to the real advantages the community would gain from the road. Inspector Jude Thibault, for example, gave the following opinion of the road after he visited Betsiamites in 1939: "This road is not used by and is of no benefit to the indians [sic]."[88] Moreover, fur supervisor H.R. Conn, who visited Betsiamites in 1945, maintained that "the use of band funds for the repairing of these roads is absolutely unwarranted. No one Indian on the reserve owns a wheeled vehicle, each possibly only a wheelbarrow."[89]

Nevertheless, in 1946, the Deputy Minister of Lands and Forests agreed in principle to the procedure proposed by Canada:

> in my opinion it should be sufficient and ... it would be an easier procedure to pass a Dominion Order-in-Council granting, without any indemnity or compensation, to the Quebec Roads Department permission to build and to maintain the road within the reserve.[90]

There is no reply from Indian Affairs to the Deputy Minister of Lands and Forests in the record. However, in late November 1947, the Deputy Minister responsible for Indian Affairs wrote to the Quebec Deputy Minister of Roads, again requesting that a survey plan for the road be submitted in order to proceed with the transfer of title; no mention was made at this time of the plans submitted in 1944.[91] Indian Affairs still held the view that the benefits of the road for the Band constituted sufficient compensation:

[ICC Documents, p. 111]).

[88] Jude Thibault, Inspector of Indian Agencies, to M. Christianson, General Superintendent of Indian Agencies, August 17, 1939, with attached sketch, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, pp. 997-99).

[89] H.R. Conn, Fur Supervisor, to the Acting Director of Indian Affairs, June 25, 1945, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 1069a).

[90] Avila Bédard, Deputy Minister of Lands and Forests, to the Deputy Minister of Mines and Resources, March 27, 1946, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 1093).

[91] Deputy Minister of Mines and Resources, to Arthur Bergeron, Deputy Minister of Roads, November 26, 1947, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1096).

> As the highway is of benefit to the Bersimis Indian Band for whom the Reserve is held, it could be recommended to the Band that they request transfer of the title to the roadway without payment of any compensation in money.[92]

In December 1947, Arthur Bergeron, Deputy Minister of Roads, advised Indian Affairs that the plans were being drawn up,[93] but then wrote to say that the process would be delayed until the spring.[94] However, there is no documentary evidence to indicate that the steps to transfer title were resumed in spring 1948. The issue of title would again lie dormant for several years, until it was proposed to build a bridge over the Rivière Betsiamites.

Rivière Betsiamites Bridge and the Highway Right of Way, 1950–68

In the 1950s, Highway 15 became an increasingly important thoroughfare, owing largely to the rapid development of natural resources in Northern Quebec. According to the Quebec Roads Department's 1953 annual report: "It is already, and will increasingly grow to be, one of the main avenues of commerce and industry while rendering inestimable services to agricultural populations."[95] Automobile traffic on the highway also increased significantly during this period, and soon exceeded the capacity of the ferry across the Rivière Betsiamites. Indeed, between 1949 and 1953, the number of vehicles ferried from shore to shore rose from 13,729 to 35,521 (an increase of over 250 per cent), which meant that motorists often faced long delays at the crossing.[96]

Bridge Proposal

The suggestion for a bridge to be built across the Rivière Betsiamites to replace the ferry appears in a note to file by the Deputy Minister of Roads dated February 15, 1954.[97] The site chosen for the new bridge was 1,500 feet (457.2 metres) north of Quai des Brown, a wharf established for logging

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92 Deputy Minister of Mines and Resources, to Arthur Bergeron, Deputy Minister of Roads, November 26, 1947, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1096).

93 Arthur Bergeron, Deputy Minister of Roads, to H.L. Keenleyside, Deputy Minister of Mines and Resources, December 4, 1947, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1098).

94 Arthur Bergeron, Deputy Minister of Roads, to H.L. Keenleyside, Deputy Minister of Mines and Resources, December 22, 1947, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1099).

95 Quebec, Department of Roads, *Report for the year ending March 31st 1953* (Quebec: Queen's Printer, 1953), 19 (French version on record: ICC Documents, p. 1137).

96 Arthur Bergeron, Deputy Minister of Roads, note to file, February 15, 1954, Archives nationales du Québec (ANQ), E23, unité de rangement 1960-01-039/71, dossier 375/54 (ICC Documents, p. 1150); Senior Engineer for District 6, note to file, May 5, 1950, ANQ, E23, article 81, pièce 325/50 (ICC Documents, p. 1113).

97 Arthur Bergeron, Deputy Minister of Roads, note to file, February 15, 1954, ANQ, E23, unité de rangement 1960-01-039/71, dossier 375/54 (ICC Documents, p. 1150).

activities by the Brown Corporation. From there, a new section of road was to replace the section that ran close to the Band's community and was to connect with the existing highway east of the village.[98] There were two reasons given to justify the site chosen for the bridge and the deviation from the original course: it was "the shortest span, and secondly, as the river it spans is a navigable stream, it has to be high enough for ships to pass under it."[99]

The new location required the use of almost 42 acres of reserve land.[100] It appears, however, that the province never sought approval for the project from either the Betsiamites Band Council or Indian Affairs. On learning of the Roads Department's intentions in August 1954, G.H. Roy, Superintendent of the Agency at Betsiamites, suggested to provincial officials that the Roads Department undertake negotiations with the Department of Indian Affairs so that at least preliminary arrangements could be made with the Betsiamites Band.[101]

The Betsiamites Band Council met on August 30, 1954, to consider the Roads Department's proposal, no doubt obtained from Superintendent Roy. The band council resolved to give Indian Affairs the mandate to negotiate the necessary agreements with the Roads Department to ensure that the junction between the bridge and the former highway would be situated closer to the village, at or near a place called "Le Petit Lac."[102] The BCR to this effect was forwarded to Indian Affairs, which first approached the Roads Department on October 7, 1954. In a letter to the province, L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, stressed the fact that negotiations with the Band would be greatly facilitated if the new road segment were to pass close to the reserve.[103] If, on the other hand, the Roads Department decided to proceed with the location it had originally proposed, the Band would no doubt demand compensation. Brown further noted that a province

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98 Bersimis BCR, August 30, 1954 (ICC Documents, p. 1167). The proposed changes to the highway are shown on a Roads Department map dated January 26, 1955. See map 139-A I-S, January 26, 1955, DIAND, Main Records Office, file 379/34-1, vol. 1 (ICC Exhibit 3B, M-8).

99 L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to R.L. Boulanger, Regional Supervisor of Indian Agencies, July 19, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1213).

100 Émile Hébert, Title Investigator, Roads Department, to L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, March 14, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1177).

101 G.H. Roy, Superintendent at Betsiamites, to L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, July 6, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1208).

102 Bersimis BCR, August 30, 1954 (ICC Documents, p. 1167). The band council's proposed location is shown by a dotted line on the above-cited plan dated January 26, 1955, Map 139-A I-S, DIAND, Main Records Office, file 379/34-1, vol. 1 (ICC Exhibit 3B, M-8).

103 L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to Émile Hébert, Title Investigator, Roads Department, October 7, 1954, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1172–73).

could not expropriate reserve land without first obtaining the consent of the Governor in Council.[104] He urged the Roads Department to approach the Betsiamites Band Council, through the intermediary of Superintendent Roy, [translation] "to obtain the required consent respecting the land" necessary for the road.[105]

Negotiations between the Band Council and the Province

In a March 14, 1955, reply to Brown's letter, the Roads Department was quite vague about the province's intentions. The reply simply noted that the proposed location of the road was [translation] "not yet final," and added that it would very likely be [translation] "the one adopted as a last resort."[106] The Roads Department was more specific a few months later. On May 11, 1955, Joseph Matte, Acting Deputy Minister of Roads, informed the Deputy Minister of Citizenship and Immigration that the initial location was [translation] "to be considered final," and asked to be advised of [translation] "the procedure to be followed to obtain permission for this project."[107]

In the meantime, the Betsiamites Band Council passed a BCR on May 2, 1955, revising the position it had adopted on August 30, 1954. Instead of asking for the road to be rerouted closer to the village from the province's proposed site for the bridge, the council was now requesting that the site of the bridge itself be changed. Under the BCR, the Department of Indian Affairs was mandated to propose to the Roads Department a site some 500 feet to the north of the former ferry landing, which would enable the bridge exit to be linked to the existing highway. The council asserted that it would not consider a counter-proposal unless proof was provided that the bridge could not be erected at the site it preferred, but it would "never consider granting permission to build the road where it is shown on the plan mentionned [sic] above."[108] According to G.H. Roy, however, the band council did not dismiss the possibility that, in the event of a stalemate, it might reconsider its August

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104 In his letter, Brown referred to section 35 of the *Indian Act*, RSC 1952, c. 149.

105 L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to Émile Hébert, Title Investigator, Roads Department, October 7, 1954, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1172–73).

106 Émile Hébert, Title Investigator, Roads Department, to L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, March 14, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1177–78).

107 Joseph Matte, Acting Deputy Minister, Department of Roads, to Colonel Laval Fortier, Deputy Minister of Citizenship and Immigration [*ex officio* also Indian Affairs], May 11, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1183).

108 Bersimis BCR, May 2, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1180).

1954 proposal that the road be rerouted closer to the village from the province's chosen site for the bridge.[109]

L.L. Brown of Indian Affairs forwarded the band council's most recent BCR to Émile Hébert of the Quebec Roads Department on May 16,[110] and replied to Deputy Minister of Roads Joseph Matte on May 25.[111] In both of these letters, Brown reiterated the rules governing the expropriation of reserve lands. A few days later, the Roads Department finally undertook to negotiate with the Band. On June 3, Matte advised that Hébert would meet with [translation] "the Indian representatives to negotiate for approval of the project."[112] A few weeks later, on June 21, Hébert and another Roads Department official met with Agency Superintendent Roy at his office. Roy then called a band council meeting,[113] which started at 2:00 p.m. and lasted merely an hour and a half. After hearing the province's proposal, the assembly, composed of Chief Paul Rock and six councillors, unanimously refused any deal.[114] The band council's minutes do not spell out the Roads Department's proposal, but they do explicitly state the reasons for the council's denial: "The reason for this refusal is that the offer made by the representatives of the Roads Department, was made before all the technical arrangements were made."[115] In the opinion of Superintendent Roy, the Betsiamites Band Council was not opposed to the project; they simply wanted to "see their village profits of [sic] public utilities by having the road passing close to their village."[116] According to

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109 G.H. Roy, Superintendent, Betsiamites Agency, to L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, May 4, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1181–82).

110 L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to Émile Hébert, Title Investigator, Roads Department, May 16, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1187–88).

111 L.L. Brown, Acting Director of Indian Affairs, to Joseph Matte, Acting Deputy Minister of Roads, May 25, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1189–90).

112 Joseph Matte, Acting Deputy Minister of Roads, to G.H. Roy, Superintendent, Betsiamites Agency, June 3, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1191).

113 G.H. Roy, Superintendent, Betsiamites Agency, to L.L. Brown, Superintendent, Reserves and Trusts, Indian Affairs, July 1, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1206).

114 Bersimis Band Council, minutes of meeting, June 21, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1198).

115 Bersimis Band Council, minutes of meeting, June 21, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1198).

116 G.H. Roy, Superintendent, Betsiamites Agency, to L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, July 1, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1206). This wish is also explicitly expressed in the BCRs of August 30, 1954, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1167), and May 2, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1180).

R.L. Boulanger, Regional Supervisor of Indian Agencies, "the band will not accept anything which would isolate the Village of Bersimis from the highway."[117]

Approval by Band Council Resolutions, July 7 and July 27, 1955

Two subsequent band council meetings proved critical to the outcome of the negotiations. On July 7, 1955, the band council reversed its June 21 position and approved the Roads Department's proposed bridge site.[118] The reasons for this change are not known for certain, but it is possible that the Betsiamites had received the requested technical justification for Quebec's preferred site, namely that the site had been identified by engineers as providing the shortest possible span while allowing sufficient elevation for boat traffic to pass underneath it. A letter from L.L. Brown, dated July 19, 1955, makes the following observation regarding these technical considerations: "[W]e are glad to note that the Indians realize this and they are not pressing this point."[119]

However, the band council did attach one specific condition to its approval of the bridge site: [translation] "that the eastern approaches link the bridge with the national highway at the junction with the existing national highway and Ashini Street."[120] Once again, the Band was clearly reasserting its desire to ensure that future road infrastructures would not bypass the reserve. The July 7 BCR also included the only explicit request for compensation throughout all the negotiations leading up to the start of construction: [translation] "In compensation for the land that is to be surrendered for the construction of the bridge approaches the Council would be willing to accept the permanent asphalting of the streets in Bersimis village."[121]

At its second meeting, held on July 27, 1955, and attended by provincial officials, the Betsiamites Band Council adopted four resolutions:

> THAT: The right of way be given to the Department of Roads of the Province of Quebec, to build and maintain a road from the proposed bridge North of Quai des Brown toward the village Indien de Bersimis.

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117 R.L. Boulanger, Regional Supervisor of Indian Agencies, to L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, July 14, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1212).

118 Bersimis BCR, July 7, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1211).

119 L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to R.L. Boulanger, Regional Supervisor of Indian Agencies, July 19, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1213–14).

120 Bersimis BCR, July 7, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1211).

121 Bersimis BCR, July 7, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1211).

> THAT: The said road should be oriented to the South, to pass by the South side of the Petit Lac and then link with the No. 15 highway some1500 feet East of the North end of Ashini Street.
>
> THAT: The Department of Roads will also build a junction road starting from the North end of Ashini Street leading North-West to the proposed road.
>
> THAT: The Department of Roads be tied down with the summer maintenance of all roads or portion of roads from the North end of Ashini Street.[122]

The band council was thus granting the province a right of way, on condition that the road segment from the bridge would veer to the south so as to pass close to the village, joining the former highway at the north end of Ashini Street. The compensation for the right of way requested in the July 7 BCR, namely [translation] "the permanent asphalting of the streets in Bersimis village,"[123] is not mentioned in the July 27 BCR, although it does commit the Roads Department to "summer maintenance of all roads or portion of roads from the North end of Ashini Street."[124]

On the strength of the July 27 BCR, Indian Affairs granted the Roads Department permission to start building the bridge.[125] However, the Roads Department never completed the administrative procedure required by the *Indian Act*.[126]

Right of Way and Compensation

The first three letters from Indian Affairs to the province concerning the Rivière Betsiamites bridge mention the legal process required to secure title over the land in question. In his first letter, dated October 7, 1954, and addressed to Émile Fournier of the Roads Department, L.L. Brown referred to the rules laid out in section 35 of the 1951 *Indian Act* for the expropriation of reserve lands by a provincial government. The consent of the Governor in Council was required and prior arrangements had to be made with the Band, which was entitled to demand compensation for the land surrendered.[127]

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122 Bersimis BCR, July 27, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1222).

123 Bersimis BCR, July 7, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1211).

124 Bersimis BCR, July 27, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1222).

125 Laval Fortier to Arthur Bergeron, Deputy Minister, Roads Department, August 17, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1234).

126 *Indian Act*, RSC 1952, c. 149, s. 35.

127 L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to Émile Hébert, Title Investigator, Roads Department, October 7, 1954, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1172).

In his second letter to Fournier, dated May 16, 1955, Brown clarified the Governor in Council's powers to dispose of reserve land. Although the prior consent of the Indians was not expressly required by section 35 of the *Indian Act*, Canada's policy was to obtain such consent before the Governor in Council would grant a transfer of title to land on an Indian reserve.[128] This interpretation of the existing federal policy was confirmed by R.L. Boulanger, Regional Supervisor for Indian Affairs from 1955 to 1975, in his testimony before the ICC in May 2002:

> [simultaneous translation]
> Ms. Vary: What was the policy of Indian Affairs in those days about the reserve lands for the utilization of public lands on the reserve. ...
> Mr. Boulanger: They needed the consent of the owners.
> Ms. Vary: Was it in all cases or there could be some exceptions?
> Mr. Boulanger: To my knowledge it was in all cases."[129]

Brown's third letter, dated May 25, 1955, and addressed to Joseph Matte, Acting Deputy Minister of Roads, described the steps involved in the legal transfer of title over reserve lands:

> [translation]
> First, your agent must negotiate with the Band Council to purchase the land required. ... Once you have reached an agreement with the Band Council, the necessary application will be made to the Governor in Council to authorize your province to take the lands in question on payment of the agreed price.
>
> In order to obtain this authorization, a land surveyor for the Province of Quebec must draw up a plan in accordance with the prescribed standards.[130]

Clearly, prior to starting construction, the Roads Department had been fully advised of the steps required to secure title over the land in question: 1) the province had to reach an agreement with the Betsiamites Band Council, which could demand compensation for the use of the land; 2) once an agreement had been reached (with or without compensation), a surveyor for the Province of Quebec had to submit a plan of the proposed infrastructure [translation] "in accordance with the prescribed standards" of Canada; 3) the Governor in Council would then approve the land transfer; and 4) the Government of Quebec would take possession of the land in question.

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[128] L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to Émile Hébert, Title Investigator, Roads Department, May 16, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1187–88).

[129] ICC Transcript, May 28, 2002, simultaneous English translation (ICC Exhibit 18b, pp. 53–54, Roméo Boulanger and Carole Vary).

[130] L.L. Brown, Acting Director of Indian Affairs, to Joseph Matte, Acting Deputy Minister of Roads, May 25, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1189–90).

The first step, requiring the province to reach an agreement with the band council, was completed on July 27, 1955. Three weeks later, Laval Fortier, Deputy Minister, Indian Affairs, wrote to his counterpart at the Roads Department to confirm Indian Affairs' [translation] "full approval" of the [translation] "arrangements" made with the band council. The province was authorized to start construction, but still had to submit [translation] "a survey plan, required by law, indicating the exact location of the road," in order to secure [translation] "a right of way for the road."[131]

Before the Roads Department could produce the requested plans, however, it had to obtain the approval of the Surveyor General of Canada to perform survey operations on the reserve.[132] The Surveyor General of Canada, R. Thistlethwaite, gave his approval on September 12, but at the same time pointed out that the province would have to obtain rights over not only the new section of road:

> Since title to the highway has never been transferred to your department, it will be necessary to survey the entire highway as it will be newly constituted. The whole of the new highway should be bordered in red on the plan.[133]

The Quebec government never complied with the Surveyor General's instructions. There is no documentary evidence to explain exactly why Quebec discontinued its efforts to obtain title. Construction began in the fall of 1955 on the west side of the Rivière Betsiamites.[134] The bridge was completed in June 1957,[135] and the road, although opened to traffic earlier, was completed in autumn 1958.[136] The land title issue, however, would not be revisited for six more years, when once again an Indian Affairs' official drew attention to the problem.

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131 Laval Fortier, Deputy Minister, Indian Affairs, to Arthur Bergeron, Deputy Minister, Roads Department, August 17, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1234).

132 Arthur Bergeron, Deputy Minister, Roads Department, to Laval Fortier, Deputy Minister of Indian Affairs, August 26, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1244).

133 R. Thistlethwaite, Surveyor General, Department of Energy, Mines and Resources, to J.C. Martineau, Assistant Chief Engineer, Roads Department, September 12, 1955, Ministère des Transports du Québec (MTQ), Direction générale de l'est (ICC Documents, p. 1253).

134 Quebec, *General Report of the Minister of Public Works of the Province of Quebec for the Fiscal Year ending March 31st, 1956* (Quebec: Queen's Printer, 1956), 15 (ICC Documents, p. 1271).

135 Gédéon E. Legault, Chief Engineer, District 7, to P.A. Boutin Inc., January 28, 1958, ANQ, E23, accession no. 1960-01-039/88, file 288/57 (ICC Documents, p. 1356).

136 Assistant Chief Engineer, District 7, to Achille Tremblay, Officer of Just Salaries, Labour Department, November 6, 1958, ANQ, E23, accession no. 1960-01-039/83, file 4980/56 (ICC Documents, p. 1376).

Widening of Highway 15 and the Right of Way Issue, 1964–68

The right of way issue resurfaced in the 1960s, when the Roads Department undertook roadwork to widen and straighten Highway 15. In a letter to the Roads Department dated May 19, 1964, G.H. Roy, former Superintendent at Betsiamites who was by then assistant to R.L. Boulanger, Regional Supervisor of Indian Agencies, wrote:

> [translation]
> According to our records, it would appear that you have not yet obtained a right of way for the construction of Highway No. 15 across the Bersimis Reserve.
>
> This highway was begun about 1935 and was rerouted after the bridge was built on the Bersimis Reserve about 1956. We are aware that additional roadwork has since been done and more is under way and we ask that, upon completion of this roadwork, an official application be made to enable us to secure this right of way for you.
>
> You are no doubt aware that the survey of this highway will have to be approved by the Surveyor General of Canada and as we expect this process to be fairly lengthy, we would like negotiations to begin as soon as possible.[137]

Albert Hémont, Senior Engineer with the Roads Department for the district in question, requested background information from his department[138] before replying to R.L. Boulanger on June 26, 1964:

> [translation]
> A complete survey of Highway 15 across the reserve will be drawn up in the near future and as soon as we receive this plan, we will forward you a copy in order to obtain the right of way from your department.[139]

The file was transferred to Roland Lessard of the Roads Department's surveys and projects office, who then wrote to R.L. Boulanger requesting the plans showing the existing survey markers, as well as authorization from the Surveyor General to proceed with the requested survey.[140] On October 20, 1964, G.H. Roy[141] replied to Lessard, advising him of the Band's position with respect to the new roadwork:

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137 G.H. Roy for R.L. Boulanger, Regional Supervisor of Indian Agencies, to Roads Department, May 19, 1964, MTQ (ICC Documents, p. 1386).

138 Senior Engineer for District 7, Roads Department, to Pierre-Paul Labrie, Chief Engineer, Roads Department office, May 26, 1964, MTQ (ICC Documents, p. 1387).

139 Albert Hémond, Senior Engineer for District 7, Roads Department, to R.L. Boulanger, Regional Supervisor of Indian Agencies, June 26, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1388).

140 Roland Lessard, Manager, Lot Plans Branch, to R.L. Boulanger, Regional Supervisor of Indian Agencies, October 16, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1396).

141 At his May 28, 2002, hearing before the ICC, R.L. Boulanger stated that G.H. Roy handled the file for the Quebec City Regional Office. ICC Transcript, May 28, 2002 (ICC Exhibit 18b, pp. 48–49, Roméo Boulanger).

> [translation]
> During a visit to Bersimis last week, we were given your form V-D-1348 requesting authorization to take immediate possession of all land required to widen and straighten Highway No. 15 across the Bersimis Reserve extending from the Aux Rosiers River in a general South-Westerly direction over a distance of 2.59 miles.
> This form has not been signed by the Indian Band, but the Band does not object to this section of road being widened and improved. We are aware that a contractor is already working on this project and having received no complaint from the Bersimis Band, we see no need to fill out your form V-D-1348.
> We trust that the Council's attitude will not delay the work in progress.[142]

It is clear from this letter that the band council did not sign the form necessary to transfer the title specifically required for the road to be widened, but did not object to the work being done.

The Roads Department then took steps to obtain, through Indian Affairs, the necessary plans and instructions from the Surveyor General of Canada to prepare the required surveys.[143] It appears this step was completed, but by April 21, 1965, the Surveyor General of Canada still had not received the plans required to grant a right of way.[144] On that date, G.H. Roy wrote to the Roads Department to raise the matter once again:

> [translation]
> We believe that, at present, the roadworks to straighten this highway have been or will soon be completed and it would be advisable that you file an application accompanied by a plan for submission to the Surveyor General of Canada whose approval is required before you can be granted a right of way.
> It is also possible that negotiations be undertaken with the Bersimis Band regarding any compensation the Band may expect to receive.
> We trust that you will give this request special attention and that the necessary measures will be taken to legalize this matter.[145]

There is no evidence that the province replied to this request.

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142 G.H. Roy for R.L. Boulanger, Regional Supervisor of Indian Agencies, to Roland Lessard, Manager, Lot Plans Branch, Roads Department, October 20, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1398–99).

143 R.L. Boulanger, Regional Supervisor of Indian Agencies, to Indian Affairs, December 17, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1403); G.H. Roy, Assistant Regional Supervisor of Indian Agencies, to Roland Lessard, Manager, Lot Plans Branch, Roads Department, December 17, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1404).

144 R. Thistlethwaite, Surveyor General of Canada, to David Vogt, Lands Administrator, Indian Affairs, April 12, 1965, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1410).

145 G.H. Roy, for R.L. Boulanger, Regional Supervisor of Indian Agencies, to the Roads Department, October 20, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1412).

Quebec's Position on Compensation

In its correspondence with the Quebec Roads Department, Indian Affairs made several references to the fact that the Betsiamites Band would be entitled to compensation for the use of a portion of the reserve for Highway 15.[146] Quebec's position on this issue is unclear, but there are indications that it differed from that of Indian Affairs. On several occasions, provincial officials suggested that the Quebec government would prefer to have title assigned directly by the Governor in Council so as to avoid having to pay compensation.[147] In May 2002, in his testimony before the ICC, R.L. Boulanger implied that this was the province's position during negotiations concerning the bridge and the new segment of Highway 15:

> [simultaneous translation]
> Well, I met Mr. Martineau. I remember about only that thing. I think he was the chief surveyor or senior survey and we were discussing surveying lands at that time.
>
> They wanted the directive for the surveying had to come from Ottawa, but he was saying that he was able to do it. So we talked about the "reversive" [reversionary] right, that the federal has no right to give away a road of which it is not the owner. If the title has not been transferred to - - it was not the title that had been transferred to the federal, only the rights and the "usefruit" [usufruct] rights. I remember that.
>
> Mr. Martineau was of the opinion that the user rights, if they were given, then that land became provincial land without any compensation.[148]

Nevertheless, the documentary evidence reviewed below indicates that the Betsiamites Band probably did receive compensation for the construction of the bridge and the new segment of Highway 15, consisting of the paving of the village's streets and roads.

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[146] See, for example, L.L. Brown, Superintendent of Reserves and Trusts, Indian Affairs, to Émile Hébert, Title Investigator, Roads Department, October 7, 1954, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1172); L.L. Brown, Superintendent and Acting Director of Indian Affairs, to Joseph Matte, Acting Deputy Minister of Roads, May 25, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1189–90); G.H. Roy, for R.L. Boulanger, Regional Supervisor of Indian Agencies, to the Roads Department, October 20, 1964, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1412).

[147] See, for example, Avila Bédard, Deputy Minister of Lands and Forests, to the Deputy Minister of Mines and Resources, March 27, 1946, LAC, RG 10, vol. 7677, file 23003-1, pt. 4 (ICC Documents, p. 1093); Maurice Descôteaux, Director of Lands, Department of Lands and Forests, to Émilien Fournier, Assistant to the Director, Surveys and Projects, Roads Department, June 21, 1968, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1413–14).

[148] ICC Transcript, May 28, 2002, simultaneous English translation (ICC Exhibit 18b, p. 50, Roméo Boulanger).

Compensation: Asphalting Village Streets

In a BCR dated July 7, 1955, the Betsiamites Band Council made its first request for compensation, namely [translation] "the permanent asphalting of streets in the village of Betsiamites."[149] In the July 27, 1955, BCR, this request is not expressly reiterated, but the fourth point appears to reflect it in spirit by providing for the maintenance of the village's roads: "THAT: The Department of Roads be tied down with the summer maintenance of all roads or portion of roads from the North end of Ashini Street."[150]

In August 1956, C. Sylvestre of the Betsiamites Agency reported that the program of the new band council Chief included: "To sue the Quebec Provincial Government for the present road right of way towards the new bridge."[151] Although the precise grounds for the planned suit are not stated, they most likely pertain to the conditions of the July 27, 1955, agreement, which in the council's opinion had not been respected.

In July 2001, Bernadette St-Onge and Alexandre Hervieux, who was a signatory to the BCRs of July 7 and July 27, 1955, confirmed to the ICC that the asphalting of streets was indeed a condition of the agreement.[152] In his testimony before the ICC on May 28, 2002, Mr Boulanger supported this assertion:

> [simultaneous translation]
> I think at one point there was question of paving in dealings with the province. That's what I think. I am not sure.
>
> Before asking for paving as a sort of compensation or to agree to having the road go through the reserve. ...
>
> When I went to Bersimis after this, I realized that it was paved, and I was told that this was kind of as the result of the negotiations with the province.[153]

By August 1958, the province had asphalted [translation] "about half the streets."[154] However, not all of the village's streets would be asphalted that year. On August 7, 1958, the federal

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149 Bersimis BCR, July 7, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1211).

150 Bersimis BCR, July 27, 1955, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1222).

151 C. Sylvestre, Betsiamites Indian Agency, to Regional Supervisor, Indian Affairs, August 24, 1956, LAC, RG 10, vol. 7130, file 379/3-6 (ICC Exhibit 16).

152 ICC Transcript, June 14–15, 2001 (ICC Exhibit 14b, pp. 163–64, Bernadette St-Onge; pp. 148–49, Alexandre Hervieux).

153 ICC Transcript, May 28, 2002, simultaneous English translation (ICC Exhibit 18b, pp. 108–9, Roméo Boulanger).

154 Perreault LaRue, MP for Saguenay, to Jules D'Astous, Superintendent of Indian Affairs, August 7, 1958, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1368).

MP for Saguenay, Perreault LaRue, asked Indian Affairs to invest approximately $45,000 to help defray the costs of completing the job.[155] The department did not have the funds and refused to contribute to the project in 1958. It did agree, however, to give the request [translation] "further consideration" when the budgetary estimates for fiscal 1959/60 were published.[156] At no time did the department indicate that the Quebec government had an obligation to assume alone the full costs of asphalting the streets and roads. There is no documentary evidence showing that the province had any more asphalting done on the reserve until 1967. A 1977 internal memorandum of the Department of Transport notes that [translation] "the Reserve Council's request for the streets to be asphalted was granted in 1967."[157]

Bernadette St-Onge's testimony to the Commission on June 15, 2001, also seems to indicate that the compensation was granted in two phases. When asked whether the Quebec government had failed to fulfill promises made under the right of way agreement for Highway 15, she replied: [translation] "The surfacing was not done, I mean at the specific time."[158] Her qualification "at the specific time" suggests that the work may have been done at a later point in time. No subsequent questions were asked to clarify this reply, but Mrs St-Onge did express the opinion that the condition had not been met. In 1977, however, Chief Léonard Paul implied the contrary in a letter to the Minister of Transport and Public Works: [translation] "the then provincial government had compensated for this right of way by laying asphalt on the reserve's main streets."[159]

By this time, the asphalting needed to be redone and the Chief was appealing to the Minister for further assistance from the department:

> [translation]
> Since then, various construction works to install water mains and sewers made it necessary to remove the asphalt surface from our streets.

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155 Perreault LaRue, MP for Saguenay, to Jules D'Astous, Superintendent of Indian Affairs, August 7, 1958, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1368).

156 H.M Jones, Director of Indian Affairs, to Perreault LaRue, MP for Saguenay, August 19, 1958, LAC, RG 10, vol. 8725, file 379/8-9, pt. 2 (ICC Documents, p. 1372).

157 Gérard Bolduc, Quebec City Divisional Manager, General Surveys, to Pierre Lapointe, Director, Legal Surveys, May 19, 1977, DIAND, Quebec Region (ICC Documents, pp. 1442–43).

158 ICC Transcript, June 14–15, 2001, English translation (ICC Exhibit 14b, pp. 163–64, Bernadette St-Onge).

159 Léonard Paul, Chief of the Bersimis Band Council, to Lucien Lessard, Minister of Transport and Public Works, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1437).

> Also, Sir, as discussed during that meeting, we are requesting the participation of your department in our project to repave the reserve's streets.[160]

The evidence thus seems to indicate that, in 1955, the band council requested the asphalting of the village's streets in compensation for the construction of the bridge and the new segment of Highway 15. This condition was stated in the July 7, 1955, BCR; although the condition was not explicitly reiterated in the BCR of July 27, 1955, it appears to be referred to implicitly. The province partly fulfilled this commitment in 1958, when about half of the village's streets were asphalted. Apparently at the band council's urging, the asphalting was completed in 1967.

Status of Highway 15, 1968–99

Between 1964 and 1968, the issue of the status of Highway 15 did not receive the attention of the Department of Indian Affairs. In 1968 and 1969, however, a series of internal memos attempted to establish whether an order in council had ever been granted transferring reserve land for the right of way to the province.

Attempts to Clarify Its Status, 1968–69

In July 1968, the Sept-Îles district office of Indian Affairs requested [translation] "a copy of the Order in Council issued by the Federal Government granting the Quebec Roads Department right of way on the Reserve for the construction of Highway 15, in order to complete our right of way files."[161] When the Quebec City regional office was unable to locate the document, it forwarded the request to Indian Affairs' headquarters in December.[162] Three months later, the department replied that an exhaustive search had turned up nothing. The Quebec regional office then asked the Superintendent in Charge at the Sept-Îles district to provide any information it might have.[163] After receiving two reminders,[164] the Sept-Îles district office finally approached Paul Rock of the band council seeking documentation to confirm the status of Highway 15:

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160 Léonard Paul, Chief of the Bersimis Band Council, to Lucien Lessard, Minister of Transport and Public Works, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1437).

161 J.M. Robert for J.M. Pauze, Superintendent in Charge, Quebec City Regional Office, to the Sept-Iles District, July 16, 1968, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1415).

162 C. L'Heureux, Regional Superintendent of Administration, Quebec City Regional Office, to [Indian Affairs], December 13, 1968, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1416).

163 H.T. Vergette, Head, Land Titles Section, to the Regional Director, Quebec, March 5, 1969, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1417).

164 Memoranda from C. L'Heureux to Superintendent in Charge, Sept Îles District, dated April 14, and May 12 and June 12, 1969, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1419, 1420, 1422).

> [translation]
> When I visited your office on May 6, we discussed the right of way [for Highway 15]. ...
>
> At the same time, you informed me that you had early files possibly dating back to that period in which you might be able to find documents dealing with the above-mentioned matter, and that if so, you would forward these documents or a copy thereof to me.
>
> I would ask, if your search has been successful, that you send me any documents you consider relevant to this matter.[165]

On June 18, 1969, Rock replied that he had not yet found any such documents and requested more time to complete his search.[166] There is no further reply from Rock in the record.

Claims Filed by the Band Council, 1977–99

This correspondence between the Sept-Îles office and Paul Rock notwithstanding, Chief René Simon of the Betsiamites Band Council maintains that it was not until the late 1970s that the band council truly became aware of the irregularities in the status of Highway 15 (now Highway 138). In his opening statement to the ICC in June 2001, Chief Simon described how the matter came to the band council's attention:

> [simultaneous translation]
> During the 1970s, the members of the Band blocked Road 138 to support the aboriginal claims. In view of the hesitancy of the police authorities to intervene, that was when we learned that Quebec did not hold ownership of the right of way for this road.[167]

In a BCR dated November 17, 1977, the band council assigned a lawyer and band officials in charge [translation] "full authority to meet, discuss, negotiate, take appropriate legal action against the agencies involved"[168] as regards the right of way for Highway 138. On April 21, 1980, Jean-Paul Gros-Louis of the Department of Indian Affairs advised André Robillard that [translation] "the said

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165 J.L.R. Paradis, Superintendent of Development, Sept-Îles District, to Paul Rock, Welfare Administrator, Bersimis Band Council, May 16, 1969 (ICC Documents, p. 1421).

166 Paul Rock, Welfare Administrator, Bersimis Band Council, to J.L.R. Paradis, Sept-Îles Indian Agency, June 18, 1969, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1424).

167 ICC Transcript, June 14–15, 2001, simultaneous English translation (ICC Exhibit 14b, p. 12, René Simon).

168 Bersimis BCR, November 17, 1977, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1447).

highway [138] must to this day be considered reserve land because no federal Order in Council was ever issued granting Quebec a right of way."[169]

In September 1981, the Secrétariat des activités gouvernementales en milieu amérindien et inuit (SAGMAI) advised the band council that the Quebec Department of Transport was planning to do some surveying on the reserve.[170] The band council initially requested the right to select the company hired to do the work, and then in a subsequent letter denied permission for the work to be done.[171] The council may have suspected that the purpose of the surveying was to prepare plans for submission to Canada to secure the right of way, because four days after the letter denying permission was sent, a BCR specifically advised Indian Affairs that there was [translation] "no question of surrendering the Band's rights to the portion of the reserve which is currently occupied by Highway 138."[172]

On June 30, 1987, the band council adopted a BCR confirming its intention to take steps to conclude this matter.[173] At least four meetings were held with Department of Transport officials between January 1987 and September 1988.[174] A meeting on April 29, 1988, was intended [translation] "to take stock of the situation" and find a way [translation] "to resolve it once and for all."[175] The minutes of the meeting as drafted by a provincial official summarize the Band's position as follows:

> [translation]
> It appears that they [the band] want Quebec to negotiate on economic development initiatives, past and future, because they stated there is no question of surrendering this portion of their territory.

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169 Jean-Paul Gros-Louis, Land Titles Research Clerk, to André Robillard, Counsel for the Amerindian Police, April 21, 1980, Conseil Attikamek-Montagnais (CAM), file Route 138 (ICC Documents, p. 1465).

170 Gilles Jolicoeur, Deputy Secretary, SAGMAI, to Jean-Claude Vollant, Chief of the Betsiamites Band Council, September 9, 1981, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1466).

171 Jean-Claude Vollant, Chief of the Betsiamites Band Council, to Gilles Jolicoeur, SAGMAI, October 22, 1981, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1469).

172 Betsiamites BCR, October 26, 1981, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, p. 1471).

173 Betsiamites BCR, June 30, 1987, CAM, file Route 138 (ICC Documents, p. 1523).

174 The meetings were held on January 7, 1987, and April 29, May 10, and September 6, 1988. See Minutes of meeting, January 7, 1987, MTQ, Direction générale de l'est (ICC Documents, p. 1514); Minutes of meeting, April 29, 1988, MTQ, Direction générale de l'est (ICC Documents, p. 1534); Minutes of meeting, May 10, 1988, MTQ, Direction générale de l'est (ICC Documents, p. 1538); and Minutes of meeting, September 6, 1989, CAM, file Route 138 (ICC Documents, p. 1571).

175 Minutes of meeting, April 29, 1988, MTQ, Direction générale de l'est (ICC Documents, pp. 1533-36).

> If Quebec refuses, legal recourse is available ... According to Chief Vollant and Mr. Cleary [of the Conseil des Atikamekw et des Innus-Montagnais], recourse to specific claims review process would not be their preferred option, no more so than resorting to the courts. They would prefer a negotiated settlement.[176]

A December 1988 discussion paper essentially confirms that this was the band council's negotiating position: [translation] "[I]t is clear that the agreement ... must not involve surrender of land by the band," but rather [translation] "comprehensive compensation for past use of the land," as well as [translation] "an annual lease fee for future use."[177]

However, when a new Minister of Transport was appointed in October 1989, negotiations ground to a halt. Chief Robert Dominique wrote to the new Minister in April 1990 to express the band council's dissatisfaction:

> [translation]
> We fully understand that a change of Minister will inevitably result in delays in the processing of files. But we find six months of silence rather suspect.
>
> Today, we are asking to be clearly informed of where matters stand as regards Highway 138 at Betsiamites. Does the political will to reach a settlement still exist?
>
> We have no wish to exert undue pressure, but if in the next two weeks we have not had a satisfactory reply from you, we will have to conclude that our file has been shelved and will therefore have to consider our options for further action.[178]

The expression of the Band's displeasure reached its peak in July 1990, when it threatened to blockade Highway 138 in an effort to force the province to act.[179]

The federal Minister of State for Indian Affairs and Northern Development, Monique Landry, met with Jean-Louis Bacon, Chief of the band council, in January 1992.[180] Subsequently, on April 6, 1992, Department of Transport and band officials met [translation] "to assess the situation as regards

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176 Minutes of meeting, April 29, 1988, MTQ, Direction générale de l'est (ICC Documents, pp. 1533–36).

177 "Dossier de la route 138. Proposition d'une position de négociation," December 1988, CAM, file Route 138 (ICC Documents, pp. 1561-62).

178 Robert Dominique, Chief of the Betsiamites Band Council, to Sam Elkas, Minister of Transport, April 2, 1990, MTQ (ICC Documents, pp. 1575–77).

179 " Les Montagnais menacent de bloquer la 138," *Le Soleil*, July 13, 1990, p. A-3 (ICC Documents, p. 1585).

180 Monique Landry, Minister of State, Indian Affairs and Northern Development, to Jean-Louis Bacon, Chief of the Betsiamites Band Council, DIAND, Quebec Region, file E-5670-06110 (ICC Documents, pp. 1599–1600).

the Betsiamites highway right of way."[181] In November of the same year, the band council again sought to [translation] "regularize the situation through a political settlement between the Quebec government and the Band Council government,"[182] this time sending a proposal to the Secrétariat des Affaires autochtones (Aboriginal affairs secretariat).[183] Apparently, these efforts to reach a settlement with Quebec proved unsuccessful.

On May 10, 1995, the Betsiamites Band Council's Executive Secretary formally filed two specific claims – Highway 138 and the Betsiamites Reserve, and Bridge over the Rivière Betsiamites – with the Specific Claims Branch of DIAND. Both these claims allege that:

> [translation]
> An agreement was made between the Federal Crown and the Band Council under a Band Council Resolution dated August 11, 1924, whereby the Federal Crown was mandated to negotiate a right of way for the Province in the best interests of the Band.
> ...
> The procedure required by the Act was not followed, and rights of way for Highway 138 and the bridge were never granted to the Province.
> ...
> Funds were withdrawn from the Band's account for the construction and maintenance of the road without proper authorization.
> ...
> The Federal Crown breached its lawful obligations in this matter.[184]

On April 16, 1999, the Specific Claims Branch notified Chief René Simon of the Crown's decision: [translation] "we have concluded, on a preliminary basis, to reject these two specific claims."[185] The following month, a meeting was held between Indian Affairs and band officials "to

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181 Raymond-M. Gagnon, Aboriginal Affairs Secretariat, memorandum to Jacques Brouard, Ministry of Transport, Jean-Claude Vollant, Betsiamites Band Council, and Yves Jourdain, Provincial Cabinet, March 27, 1992, MTQ, Direction générale de l'est (ICC Documents, p. 1603).

182 "Dossier de la route 138. Proposition d'une position de négociation," [November 1992], MTQ, Direction générale de l'est (ICC Documents, p. 1611).

183 See letter from Marcelline Kanapé, Chief of the Betsiamites Band Council, to Christos Sirros, Minister responsible for Native Affairs, November 6, 1992, MTQ, Direction générale de l'est (ICC Documents, p. 1610), and the attachment to this letter, "Dossier de la route 138. Proposition d'une position de négociation," MTQ, Direction générale de l'est (ICC Documents, pp. 1611–15).

184 Paul Cuillerier, Director General, Specific Claims Branch, to René Simon, Chief, Montagnais de Betsiamites, April 16, 1999, with attachment (ICC Documents, pp. 1656–64).

185 Paul Cuillerier, Director General, Specific Claims Branch, to René Simon, Chief, Montagnais de Betsiamites, April 16, 1999, with attachment (ICC Documents, pp. 1656–64).

discuss Highway 138 and the Betsiamites Bridge, among other things."[186] On July 12, 1999, the Betsiamites Band Council requested that Canada review its decision.[187] On September 22, 1999, the Specific Claims Branch rejected the request for review, concluding that [translation] "having considered all the evidence, we fail to find that the Government of Canada breached its lawful obligations."[188]

Indian Claims Commission Inquiries, 2000–4

The Betsiamites Band Council pursued the matter with the Indian Claims Commission, requesting on June 5, 2000, that the Commission review the decision of DIAND to reject its claims.[189] On June 13, 2000, the Commission acknowledged receipt of the band council's request, concluding that [translation] "this matter appears to be within the Commission's jurisdiction."[190]

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186 René Simon, Chief of the Betsiamites Band Council, Memorandum to Members of the Betsiamites Band Council, May 5, 1999 (ICC Documents, p. 1665).

187 René Simon, Chief of the Betsiamites Band Council, to Paul Cuillerier, Specific Claims Branch, July 12, 1999 (ICC Documents, pp. 1668–69).

188 Paul Girard, Director General, Specific Claims, to René Simon, Chief of the Betsiamites Band Council, September 22, 1999 (ICC Documents, p. 1674).

189 René Simon, Chief of the Betsiamites Band Council, to the Indian Claims Commission, June 5, 2000 (ICC file 2104-10-1, vol. 1).

190 David E. Osborn, Indian Claims Commission, to René Simon, Betsiamites Band Council, June 13, 2000 (ICC file 2104-10-1, vol. 1).

PART III

ISSUES

The Indian Claims Commission commenced its inquiries into the two claims of the Betsiamites Band on the basis of three issues:

1 Did Canada breach its lawful obligations with respect to Highway 15 (now Highway 138) within the boundaries of the Betsiamites Reserve?

2 Did Canada breach its lawful obligations by withdrawing funds held in trust for the Betsiamites Band to pay for roads within the boundaries of the Betsiamites Reserve between 1928 and 1939?

3 Did Canada breach its lawful obligations with respect to the bridge over the Rivière Betsiamites and its connecting road?

PART IV

CONCLUSION

The inquiries into the specific claims of the Betsiamites Band concerning Highway 138 through the Betsiamites reserve and the bridge over the Rivière Betsiamites proceeded concurrently. On June 14 and 15, 2001, the Commission heard oral testimony from elders at a community session convened at Betsiamites. Seven elders appeared as witnesses, including one person who was a signatory to the Band Council Resolutions of July 7 and July 27, 1955. The participants at the community session spoke in Montagnais, French, English, or a combination of these languages. Simultaneous translation was available. The Commission also received the oral evidence of Mr Roméo Boulanger, formerly Regional Director, Quebec Region, Department of Indian Affairs and Northern Development, in May 2002.

In October 2002, Indian Affairs requested that the Commission's inquiry be adjourned for six months to permit Canada to re-examine the two claims.[191] With the consent of the Band, the Commission subsequently agreed to extensions of the adjournment to December 2003. On January 8, 2004, the Minister of Indian Affairs accepted the two claims for negotiation[192] and the band council accepted the Minister's offer by Band Council Resolution dated February 13, 2004.[193]

The Indian Claims Commission issued an order on March 15, 2004, to the effect that, as a result of the Betsiamites Band's acceptance of Canada's offer to negotiate the two specific claims, the Commission's inquiries into the claims were concluded.[194]

FOR THE INDIAN CLAIMS COMMISSION

Sheila G. Purdy
Commissioner (Chair)

Alan C. Holman
Commissioner

Dated this 10th day of March, 2005.

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[191] Carole Vary, DIAND Legal Services, to Commissioners Roger Augustine, Alan Holman, Sheila Purdy, Renée Dupuis, Case Manager, Kathleen Lickers, Counsel, Indian Claims Commission, and Robert Mainville, Counsel for the Betsiamites Montagnais, October 10, 2002 (ICC file 2104-10-1, vol. 5).

[192] Andy Mitchell, Minister of Indian Affairs an Northern Development, Ottawa, to Raphaël Picard, Chief, Betsiamites Montagnais Council, January 8, 2004 (ICC file 2104-10-1, vol. 5). This letter is reproduced as Appendix B to this report.

[193] Robert Mainville, Counsel for the Betsiamites Montagnais, John B. Edmond, Commission Counsel, Indian Claims Commission, February 20, 2004, enclosing BCR dated February 13, 2004 (ICC file 2104-10-1, vol. 5).

[194] ICC, Order, dated March 15, 2004. This order is reproduced as Appendix D to this report.

APPENDIX A

BETSIAMITES BAND: HIGHWAY 138 AND RIVIÈRE BETSIAMITES BRIDGE INQUIRIES
INTERIM RULING

August 28, 2002

Me Carole Vary
Services juridiques, MAINC
10, rue Wellington, 10e étage
Hull (Québec)
K1A 0H4

Via facsimile

- and -

Me Robert Mainville
Mainville et associés
1155, rue University
Montréal (Québec)
H3B 3A7

Objet : Conseil de bande de Betsiamites
Route 138 et réserve de Betsiamites, notre dossier n° 2104-10-01
Pont de Betsiamites, notre dossier n° 2104-10-02

The Commission Panel has completed its review of Ms. Carole Vary's letter of July 3, 2002 enclosing 83 documents, Mr. Mainville's letter of July 8, 2002, and Ms. Vary's letter of July 15, 2002.

The Panel has decided that the 83 documents will be admitted into evidence, on the basis that they are relevant to determining whether or not English only was used in the drafting of documents attributed to the Band Council or the Band Chief. Counsel for the First Nation acknowledges in his correspondence of July 8, 2002 that evidence related to the use of English is "an important and serious matter that deserves to be considered by the Commission." As such, it is our view that counsel for Canada should have an opportunity to refer to these documents in answer the First Nation's arguments on this point. Both parties will have the opportunity to argue, based on the documents now admitted and other evidence in the record, whether a practice of drafting documents first in French existed and if so, the conclusions, if any, that the Panel should make.

In our view, these documents and the record are sufficient to enable the parties to make adequate arguments on this point. The Panel, therefore, refuses counsel for Canada's request for additional time to conduct more extensive research into this question, nor will the Panel receive further documentation on this point from Canada, unless that documentation is the Minutes of the meeting relating to the July 27, 1955 BCR or a French version of the English BCR of July 27, 1955.

Further, the Panel requires that Canada provide forthwith to the First Nation and the Commission the methodology used to frame the search for these documents.

The Panel clearly recognizes that by adding these 83 documents into the record, the First Nation has the right to request time to respond. We shall await this response and accept that should

the First Nation decide to conduct its own research, the delivery of the parties' written submissions may be delayed.

Finally, the Panel is of the view that its earlier ruling of May 28, 2002, was confined to a request by counsel for Canada for permission to conduct general research into the First Nation's records. Consequently, that ruling did not deal with the production of documents from Canada's records and the request to admit those documents.

Commissioner Purdy Commissioner Holman Commissioner Augustine

c.c. Chef Raphaël Picard, Conseil de bande de Betsiamites
Nadia Bartolini, MAINC, Bureau des revendications particulières
Commissaire Renée Dupuis, CRI, commissaire-gestionnaire du dossier

APPENDIX B

GOVERNMENT OF CANADA'S OFFER TO ACCEPT CLAIM

[Translation]

Minister of Indian Affairs and Northern Development
Ottawa, Canada, K1A 0H4

WITHOUT PREJUDICE

January 8, 2004

Mr. Raphaël Picard
Chief, Betsiamites Montagnais Council
4 Metsheteu Steet
Betsiamites, Quebec
G0H 1B0

Dear Mr. Picard,

On behalf of the Government of Canada and in compliance with the Specific Claims Policy, I have the pleasure of offering you the acceptance, for negotiation, of the specific claims submitted by the Montagnais of Betsiamites, concerning Highway 138 through the Betsiamites Reserve as well as the abutments of the bridge over the Betsiamites River and the road segment connecting the bridge to Highway 138.

Following a re-examination of this matter and within the framework of the Specific Claims Policy, the Government of Canada recognizes that these claims show breaches of the Government of Canada's legal and fiduciary obligations under the *Indian Act* relating to the use of reserve lands for public purposes. However, the settlement of these claims will require the cooperation of the Quebec Government, who will therefore be invited to participate in the negotiation.

The details of the acceptance of your claims for negotiation will be communicated to you in an upcoming letter by Mr. Michel Roy, Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada. I am hopeful that this offer of acceptance, which is part of a reconciliation process, will lead to a settlement of this outstanding grievance and will help ground our future relationship on better footings.

Sincerely,

[signature]

Andy Mitchell, P.C., M.P.

c.c.: Mrs. Renée Dupuis

APPENDIX C

BETSIAMITES BAND
HIGHWAY 138 AND RIVIÈRE BETSIAMITES BRIDGE INQUIRIES

1 Planning conferences — Ottawa, March 22, 2001

2 Community session — Betsiamites, June 14–15, 2001

The Commission heard from Chief René Simon, Jean-Claude Vollant, Moïse Bacon, Pascal Bacon, Alexandre Hervieux, Adélard Riverin, Paul Benjamin, Joseph-Jacques Fontaine, Bernadette St-Onge.

3 Witness session — Quebec, May 28, 2002

The Commission heard from Roméo Boulanger.

4 Content of formal record

The formal record consists of the following materials:

Highway 138

- the documentary record (7 volumes of documents, with annotated index) (Exhibit 1)
- 19 Exhibits tendered during the inquiry

Rivière Betsiamites Bridge

- the documentary record (1 volume of documents, with annotated index) (Exhibit 1)
- 19 Exhibits tendered during the inquiry

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry.

APPENDIX D

ORDER

Conseil de bande de Betsiamites
[Route 138 et réserve de Betsiamites]

Conseil de bande de Betsiamites
[Pont de la rivière Betsiamites

DÉCLARATION

Le 16 mai 1995, le Conseil de bande de Betsiamites, à Betsiamites, Québec, (le Conseil) a présenté des revendications particulières au Ministre des Affaires indiennes et du Nord canadien (le Ministre), concernant les questions suivantes :

1 la route 138 et la réserve de Betsiamites;
2 le pont de la rivière Betsiamites.

Le 16 avril 1999, le Ministre a rejeté ces revendications.

Dans une lettre datée du 5 juin 2000, suivie d'une résolution du conseil de bande datée du 28 novembre 2000, le Conseil a demandé à la Commission de faire enquête sur ces deux revendications.

ORDER

On May 16, 1995, the Betsiamites Band Council, Betsiamites, Quebec ("the Council"), submitted specific claims to the Minister of Indian Affairs and Northern Development ("the Minister") respecting the following:

1 Highway 138 and the Betsiamites Reserve
2 Bridge over the Rivière Betsiamites

On April 16, 1999, the Minister rejected these claims for negotiation.

By letter dated June 5, 2000, followed by a Band Council Resolution dated November 28, 2000, the Council requested that this Commission conduct an inquiry into each of these claims.

Le 13 juin 2000, la Commission a accepté de tenir une enquête sur chacune de ces revendications.

On June 13, 2000, this Commission accepted this request.

Les enquêtes sur ces revendications se sont ensuite déroulées concurremment jusqu'au 16 décembre 2002. En cours d'enquête, le témoignage de membres de la Première Nation a été recueilli à l'audience publique tenue les 14 et 15 juin 2001, et le témoignage de M. Roméo Boulanger, ancien directeur régional, Région du Québec, ministère des Affaires indiennes, a été recueilli le 28 mai 2002.

The inquiries into these claims then proceeded concurrently until December 16, 2002. During the course of the inquiries, testimony of members of the First Nation was taken at the community session held on June 14 and 15, 2001, and the evidence of M. Roméo Boulanger, formerly Regional Director, Quebec Region, Department of Indian Affairs, was taken May 28, 2002.

Le 10 octobre 2002, le Canada a proposé d'examiner à nouveau les revendications. Le 16 décembre 2002, le Conseil a accepté, par résolution du Conseil de bande datée du jour même, d'ajourner les enquêtes pour une durée déterminée. Le Conseil a par la suite accepté de prolonger la durée de l'ajournement des enquêtes.

On October 10, 2002, Canada proposed a further review of the claims. On December 16, 2002, the Council agreed, by Band Council Resolution of that date, to adjourn the inquiries for a given period. The Council subsequently agreed to extensions of the period of adjournment.

Dans une lettre datée du 8 janvier 2004, le Ministre a offert d'accepter ces revendications aux fins de négociation.

By letter of January 8, 2004, the Minister offered to accept these claims for negotiation.

Le Conseil a accepté l'offre du Ministre, par résolution du Conseil de bande datée du 13 février 2004.

The Council accepted the offer of the Minister by Band Council Resolution dated February 13, 2004.

PUISQUE les revendications particulières en l'espèce ont été acceptées pour négociation par une lettre datée du 8 janvier 2004 (voir annexe A) et puisque le Conseil a accepté l'offre du Ministre par une résolution du conseil de bande datée du 13 février 2004 (voir annexe B), le comité chargé des présentes enquêtes conclut qu'il y a lieu de conclure ces enquêtes.

SINCE the specific claims have been accepted by the Minister for negotiation by letter of January 8, 2004 (attached as Appendix A) and the Minister's offer has been accepted by the Council by Band Council Resolution of February 13, 2004 (attached as Appendix B), the panel hearing these inquiries finds that there are no longer any matters to be inquired into.

EN CONSÉQUENCE, LA COMMISSION DÉCLARE DONC :

Quel les enquêtes sur ces revendications particulières sont closes.

Fait à Québec, QC, ce 15e jour de mars 2004.

Sheila Purdy
Commissaire (présidente)

Alan Holman
Commissaire

THIS COMMISSION THEREFORE ORDERS AS FOLLOWS:

The inquiries into these specific claims are hereby concluded.

At Quebec, QC, this 15th day of March, 2004.

Sheila Purdy
Commissioner (Chair)

Alan Holman
Commissioner